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To the Graduate Council:

I am submitting herewith a dissertation written by Holly Ningard entitled "Attorney Stories of Environmental Crime: Harms, Agents, and Ideal Cases." I have examined the final electronic copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, with a major in Sociology.

Lois Presser, Major Professor

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Michelle Brown, Christina Ergas, Patrick Grzanka, Avi Brisman

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(Original signatures are on file with official student records.)

Attorney Stories of Environmental Crime: Harms, Agents, and Ideal Cases

A Dissertation Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Holly Ningard
December 2018

DEDICATION

For dad, with lots of love.

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ABSTRACT

We know and make sense of the world through stories. As such, stories shape our expectations for the future, and subsequently our behaviors. This dissertation project investigates attorney stories of environmental crime, contributing to a growing body of literature in both narrative criminology and green cultural criminology. I uncovered three stories of environmental crime commonly told by 14 attorneys, involved in environmental practice, with whom I conducted qualitative interviews: 1) low-hanging fruit stories, which involve a direct harm to the environment perpetrated recklessly or negligently by an individual perpetrator, 2) stories of the state as an agent of harm, where the harm focused on is perpetrated by overbearing environmental regulations and regulatory agencies, and 3) stories which describe a shift to agentless environmental harms, where we are all responsible for the perpetration of complex environmental issues. The aforementioned stories largely omit victims and obscure harms. They vilify the state and extant remedies. By holding everyone accountable for perpetuating the complex environmental harms we face today, it allows no one in particular to be held accountable. In these ways, they uphold a culture that lets complex but pressing harms continue to be done with impunity. I hope my inquiry can help to construct new stories of resistance.

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CHAPTER 1

INTRODUCTION: PRESSING ENVIRONMENTAL CONCERNS

Stories are a fundamental way by which we come to know and make sense of the world. They help us organize knowledge and experience and thus shape our expectations and future behaviors. Narrative criminology pursues an understanding of the various stories that influence harm (Presser and Sandberg 2015; Presser 2013). Green criminology directs our attention to environmental harm. Inspired by both paradigms, this dissertation explores stories that construct environmental crime. Reasoning that attorneys have a pivotal role in constructing courtroom narratives, thus potentially influencing justice outcomes, I interviewed fourteen lawyers with experience working in environmental law to discern the stories they tell of ideal cases of environmental crime. Collecting and analyzing environmental crime stories is an important contribution to both narrative criminology and green criminology, as well as to a broader understanding of how environmental crime gets constructed by legal actors.

The stories attorneys told largely omit victims (including humans, non-human animals, and the environment itself) and obscure environmental harms. They vilify the state and existing options for alleviating environmental problems. In these ways, they uphold a culture that lets complex but pressing harms continue to be done with impunity. I hope that by uncovering these stories, my inquiry can help to construct new stories of resistance which may shape how we regard environmental crime in the future.

The contemporary consequences of environmental harm are dire. Ninety-two (92) percent of the world's population breathes polluted air, according to the World Health Organization's

most recent air quality report. While polluted air is a global problem, countries in Africa, Asia, and the Middle East experience the highest levels of ambient air pollution (WHO 2016).

Annually, roughly 200,000 early deaths in the United States and 7 million early deaths globally are attributed to air pollution (Weller 2018; IEA 2016; Caiazzo et al. 2013); it is a risk factor for low birth weights, heart disease, stroke, chronic obstructive pulmonary disease, and cancer (Weller 2018; Kaufman et al. 2016; Trasande 2013).

Humans produce 1.3 billion total tons of waste each year (Hoornweg and Bhada-Tata 2011). Eighty (80) percent of the wastewater produced in the world is released back into the environment without being treated (UNEA 2017). Between 4.8 and 12.7 million tonnes of plastic waste are released into the ocean each year (UNEA 2017:07). A growing amount of e-waste is generated from old cell phones, computers, and other electronic products (Bisschop 2016, 2014). In 2016, only 20 percent of the 49 million tons of e-waste generated worldwide was disposed of or recycled properly (Baldé et al. 2018). The human health consequences associated with e-waste, exacerbated by illicit trade and burning of the waste, include impaired thyroid function, chronic lung problems, birth defects and developmental impairment in children, cytotoxicity and gene toxicity (UNEA 2017).

Both direct (e.g, poaching, trafficking, overfishing) and indirect (loss of habitat, changing climate) human activity has resulted in an extreme loss of biodiversity on the planet (Brashares et al. 2014). While extinction is a natural phenomenon, occurring at an average rate of one to five species per year, human activity has accelerated extinction to between 100 and 1,000 times the background rate (Chivian and Bernstein 2008). Since 1970, fifty percent of the flora and fauna species which once existed on earth have become extinct (Carrington 2014), altering our ecosystems in long-term ways we have yet to fully measure. The mass destruction of plant and

animal species as a result of human activity has led scientists to label this present moment the sixth extinction (Kolbert 2014). For example, pollution of the water and soil in and around Chesapeake Bay has led to declining populations of underwater grasses, oysters, and blue crab. This disruption has thrown off the balance of the ecosystem, affecting other flora and fauna that call the Bay home (Babcock 2009). The aggregate consequences of these and many more environmental harms facing us could not be more dire.

Environmental harms result not only from direct human action, but also from structural and institutional arrangements founded on particular constructions of the meaning of environment and conventional lifestyles in the modern era. The purpose of this dissertation is to investigate this cultural configuration from a particular angle, that of attorneys who work in the realm of environmental law. Definitions of crime – and more broadly, harm – are produced by institutions and actors in large part via stories, which have great impact on our expectations of what “crime” is or ought to look like, and subsequently our reactions when confronted with potential criminal acts. I ask: How do lawyers describe a strong legal case against an actor that has caused environmental harm? Who are the victims and offenders in such a case? What actions are involved and defined as criminal? In the realm of criminal justice, idealizations or prototypical understandings of crime in part determine which crimes get prosecuted and subsequently convicted, and what crimes do not (Weiss and Colyer 2010; Davis 2007; Offit 2007; Peelo and Soothill 2000; Steffensmeier et al. 1998). No comparable exploration has been undertaken in the area of environmental harm.

This introductory chapter provides an overview of the project. I begin by conceptualizing environmental harm and environmental crime and deliberating on the critical potential of examining harm rather than crime. As a foundation for considering the role that attorneys play

and the work that they undertake or perform in addressing environmental harms, I then briefly outline the tools available to regulatory agencies when alleged environmental harms become evident. Finally, I elaborate on past research surrounding ideal crime stories as a means of further situating the importance of studying attorney stories of environmental harm.

Environmental Harm and Environmental Crime

We may define environmental harm as “transgressions that are harmful to *humans, environments and non-human animals*, regardless of legality per se” (White 2011:3; emphasis in original). To avoid a tautological definition, we might turn to Presser’s (2013:2) definition of harm as “trouble caused by another.” Such trouble need not be intended or foreseeable, she observes, but actors “must have had some notion that their (in)action might result in harm” (Presser 2013, p. 7).

The expression *environmental harm* is most often associated with acute disasters, invoking names like Bhopal, Love Canal, and Flint, Michigan. While such instances certainly refer to egregious instances of environmental harm, in fact harms against the environment are an ubiquitous feature of modern life. Harms are often patterned, structured by global capital and social inequality.

The focus of this dissertation project is on attorney constructions of *environmental crime*. In particular, it is a project situated under the purview of green cultural criminology, in that it seeks in part to understand how definitions of environmental crimes are constructed, as opposed to believing that environmental crime refers to some objective reality (Brisman and South 2014). Criminalization is one chosen strategy for responding to the most egregious offenses against the

environment. We may distinguish environmental crime as a specific type of environmental harm that violates a law. In other words, some environmental harms “become” environmental crimes via the process of lawmaking and law enforcement. Other definitions of environmental crime are as follows:

Environmental crime – as distinct from the socio-spatial patterns of urban crime studied by some criminologists – involves offenses or transgressions that harm, damage or destroy our natural environments and thereby affect humans, nonhuman species, specific environments and the Earth as a whole (Brisman and South 2015:130-131).

The trading and smuggling of plants, animals, resources and pollutants in violation of prohibition or regulation regimes established by multilateral environmental agreements and/or in contravention of domestic law (Forni 2010:34).

An unauthorized act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction.

This offence harms or endangers people’s physical safety or health as well as the environment itself (Situ and Emmons 2000:3).

The Brisman/South and Situ/Emmons (less so the Forni) definitions are broad, encompassing a wide array of potentially criminal behaviors. The chief offenders of environmental crimes are

corporations, although other organizational actors, such as the military, may be involved, and individuals can and do commit environmental crimes. Victims can be people, non-human animals, and ecosystems as a whole (White 2011, 2010; Situ and Emmons 2000). Examples of environmental crime include the illegal export, storage, or disposal of waste products (Baird, Curry, and Cruz 2014); trafficking, poaching, overfishing/overhunting of non-human animals (Beirne 2014); and the reckless and negligent conditions which led to the Deepwater Horizon oil spill that resulted in widespread damage to the Gulf of Mexico (Bradshaw 2015; Uhlmann 2011). The economic consequences of environmental crime are high. Transnational environmental crime has been valued at \$22-31 billion each year (Lauterback 2005). Crimes associated with black market trafficking in natural resources and animals, as well as waste materials, cost up to \$200 billion annually (Nellemann 2014). Illegal logging costs countries located in the global south \$15 billion in lost revenue each year (Bisschop 2016; EIA 2007). We see other sorts of offenses, or “crossover crimes” (Wright 2011), overlapping with environmental crime, including murder, money laundering, corruption, falsification and forgery. Similarly, illicit wildlife trafficking is often associated with organized criminal syndicates, using overlapping routes to smuggle plants and animals as they do guns and drugs (Himbert 2014; South and Wyatt 2011).

While virtually anyone or anything can experience the harmful consequences of environmental crimes, research in the field of Environmental Justice (EJ) highlights that communities of color, working-class and low-income communities, indigenous populations, and other marginalized groups are disproportionately affected by ecological destruction (Bullard 1993; UCC 1987). Industry-adjacent communities suffer the most from exposure to pollutants, in increased rates of chronic illness, cancer, miscarriage, and birth defects (Lerner 2010; Bullard 1993). Hazardous waste sites are more likely to be located within or adjacent to low income

communities and communities of color (Collins, Munoz, and JaJa 2016; Taylor 2014; Lerner 2010; UCC 1987; US GAO 1983; Freeman 1972). Minority neighborhoods are exposed to nitrogen dioxide, a major industrial air pollutant, at 38 percent higher rates than are white communities (Clark, Millet, and Marshall 2014). Native reservations are often used to house toxic waste, which is often coercively or illegally dumped on tribal land (Brook 1998).

The disproportionate burden of environmental harms extends internationally. Detrimental health problems resulting from climate change impact poorer nations earlier and more intensely than wealthier nations (Costello et al 2009). Developing nations, which often have lax environmental protection regulations, are targets for illegal trade and dumping of e-waste (UNEA 2017). The export of toxic wastes from the global North to the global South reproduces race and class inequalities globally, where the dumping of waste in poorer countries that lack the infrastructure to properly dispose of such waste is seen as natural and acceptable (Pellow 2007; Frey 1994). Broadly, mines, landfills, incinerators, and other heavily polluting industries are more likely to be located near marginalized communities (Ringquist 2005). Critically, EJ scholarship informs us that environmental protection ought to be a part of social justice endeavors, jhk (Pellow 2016; Bullard 1993; UCC 1987).

Environmental crime, in sum, encompasses a variety of sanctionable behaviors, loosely organized around harm to the environment, which carry immense costs to humans, non-human animals, natural resources, and the health of the planet as a whole. Several factors make environmental crimes distinct from other crimes, and thus have made alleviating the burden of these harms difficult. One factor is that very often environmental harms deemed criminal overlap with actions that are legally permissible. Criminal statutes of environmental law in many cases do not declare an action inherently unlawful, even if it causes harm to the environment, but

rather set parameters regarding how much harm can occur (White 2013; Korsell 2001). To give an example, there is no legally permissible form of “murder”¹ – a crime that is widely considered to be inherently unlawful. Certain amounts harmful air emissions are allowed to be emitted from vehicles however, so long as they do not exceed the standards set by the EPA. In the following section, I turn my focus to the variety of regulatory responses available when violations of environmental law do occur, with specific focus on criminalization.

The Criminalization of Environmental Harm

We have almost as many regulatory tools available to us as there are environmental harms to assist with reducing harm or punishing actions that inflict harm against the environment. These include awarding grants or subsidies to those companies that invest in clean energy, advertising campaigns and product labeling, voluntary codes of conduct that companies can adopt, and threats of civil or criminal punishment (Watson 2005; Burns and Lynch 2004). Currently, more than 350 environmental courts are in operation in 41 countries. Alternative dispute resolution (ADR) techniques, such as face to face mediation, have been found to be successful in providing satisfaction for both parties in environmental cases, however these require continual monitoring to ensure that nonprofits and other underfunded groups have equal access to quality mediators and opportunities to pursue ADR options (O’Leary and Raines 2001). Recent years have brought an increase in environmental harm-specific courts, such as the

¹ However, some ways of killing people are legal, such as capital punishment, war, and use of force by police officers); murder is the term we use to distinguish legal from illegal killing.

International Environmental Court, which focuses entirely on environmental offenses (White 2013).

The method of response to environmental harm varies according to a number of factors. The geographic site of the harm evidently affects response – questions of jurisdiction become muddled when a harm affects a local, regional, or national space. A chemical spill into a river, for example, has the potential to affect hundreds to hundreds of thousands of individuals, depending on the size of the spill and how far the spill travels, many of whom may reside outside of the legal jurisdiction of the original spill. Budgetary concerns also factor into regulatory decision making (White 2010). Generally speaking, the question of which regulatory tool should be utilized has fallen on individual nations and regions within those nations to come up with regulatory schemes for their home country and/or region, as opposed to addressing harms globally (Wright 2011). Countries in the Global North tend to have a greater number of more elaborate environmental regulations, and low conviction rates. For example, the EU has national courts that prosecuted just 122 environmental cases between 1992 and 2003 (Fröhlich 2003). When international bodies fail to develop comprehensive and cohesive legislation, loopholes may open up where lax laws in one country undermine laws in another (Wright 2011). Additional considerations for responses to environmental harm include the social and economic contexts of the perpetrators of the crime (White 2013). Both the size of the company, as well as whether or not the perpetrator is a repeat offender, factor in to sanctioning decisions (Wright 2011). Despite the vast array of available responses, “the reality is that the [environmental] enforcement process is fundamentally one of self-compliance and negotiation” (Kraft 2001:137) between regulatory agencies and offenders. In other words, in the context of the United States,

the EPA and similar agencies rely largely on civil and administrative options and encourage voluntary compliance with environmental law (Burns and Lynch 2004).

My focus is criminal prosecution within the United States². The United States EPA defines environmental crime, in line with Situ and Emmons (2000), as: “a negligent, knowing, or willful violation of a federal environmental law. ‘Knowing’ violations are those that are deliberate and not the product of an accident or mistake” (US EPA 2016a). The definition provides little guidance as to what constitutes a knowing violation. Uhlmann (2011:1455), describing this ambiguity, writes the following:

The Supreme Court has never addressed what it means to act knowingly under the environmental laws, but the courts of appeals have uniformly held that “knowingly” requires proof that the defendant had knowledge of the facts that constitute the violation; knowledge of the law is not required. For example, in a hazardous waste disposal case, courts have required the government to show that the defendant knew that (1) the material involved was waste;

² Several studies provide overviews of environmental law elsewhere (see Billiet, Earnhart, and Rousseau 2018; Almer and Goeschl 2010; Bricknell 2010; White 2010; Wang 2006; Watson 2005; Akella and Cannon 2004; Korsell 2001). In addition, most violations of the major federal legislation in the United States (e.g., the Clean Air Act, Clean Water Act, Comprehensive Environmental Response Compensation and Liability Act, and the Resource Conservation and Recovery Act) are treated as civil or regulatory infractions, not crimes. For a full summary and discussion of this legislation, see Burns and Lynch (2004).

(2) the waste had the substantial potential to be harmful to public health or the environment; and (3) the waste was disposed.

Conduct for criminal prosecution is often no different than civil enforcement, with the major distinction being intent or proof that defendants acted knowingly (Uhlmann 2011).

Most environmental crimes in the United States are treated as regulatory violations, responded to via a complex system of competing regulatory demands. There are two main agencies which carry out criminal enforcement of environmental law: the Environmental Protection Agency (EPA) and the Department of Justice (DOJ) Environmental Crimes Unit, with the EPA being the largest regulatory agency in our government (Burns and Lynch 2004)³. Criminalization of environmental harm was largely brought about during the 1960s and 1970s after a flurry of high-profile environmental disasters, such as Love Canal, the burning of the Cuyahoga River, and the publication of Rachel Carson's *Silent Spring* (Burns and Lynch 2004).

Criminal enforcement under the Environmental Protection Agency (EPA) officially began in 1982⁴. The Justice Department allowed the EPA to deputize its agents in 1984, and in

³ Other federal agencies that have jurisdiction over environmental issues: Department of Agriculture, Department of Defense, Department of Energy, Department of the Interior, and the Nuclear Regulatory Commission (Burns and Lynch 2004).

⁴ The U.S. Environmental Protection Agency (EPA) in the United States was established in December of 1970 via executive order of President Richard Nixon. Prior to investigating criminal matters in 1982, it undertook the job of issuing permits and setting environmental safety standards, as well as the creation of policies that reduce environmental risk. The EPA is also

1988, EPA investigators were given law-enforcement authority. At the state level, each state has its own regulatory agency with at least one environmental regulatory agency that works with the federal EPA. State agencies are given some measure of freedom, but must conform to federal environmental guidelines (Burns and Lynch 2004). In October of 1982, the U.S. Justice Department established the Environmental Crimes Unit, which obtained more than 900 criminal indictments that resulted in almost 700 guilty pleas and convictions in its first 10 years (DOJ 2015; Brickey 1996). The early 1990s were the peak of criminal prosecution of environmental crimes, which have dropped since then (Benson 2000). Despite early victories, federal criminal enforcement of environmental law is rare. The EPA employs only about 200 agents to investigate environmental crimes on a limited budget; in 2010, the budget for environmental crime enforcement was 50 million dollars (Ozomy and Jarrell 2016; Solow and Carpenter 2011). The DOJ Environmental Crimes section has 43 prosecutors (DOJ 2015). As a result, the EPA typically chooses to negotiate settlements rather than prosecute offenders criminally. This results in criminal environmental law having weak deterrent effect, and, in fact, offenders see regulatory enforcement as a variable in operating costs (Ozomy and Jarrell 2016; Uhlmann 2009).

Despite the fact that criminal enforcement of environmental law is so rare, I have narrowed my focus to it for the symbolic power that law stands to exercise. Legal cases, especially high-profile ones, become symbolic of larger social causes (Chancer 2005). They represent the values that society upholds and wishes to reject. Despite the rarity of criminal environmental cases, that this is an area with such potential power is the reason I want to fully

tasked with providing enforcement information to the public (Ozomy and Jarrell 2016; Burns and Lynch 2004).

investigate it. Criminal environmental cases are also likely to be the ones with the greatest chance of being seen publicly, given that most environmental crime goes unnoticed due to a lack of attention (Ozymy and Jarrell 2016). The decision to prosecute an act, rendering a violation more visible to the public, is often symbolic by the EPA to send a message to would-be offenders (Kraft 2001).

Criminal law addresses three distinctive concerns: harm, culpability, and deterrence (Brickey 1996). Criminal law is meant to deter or incapacitate environmental crimes. However, most environmental crime is enforced via administrative, regulatory, or civil pathways and not through criminal pathways (Brisman and South 2015). “For instance, in jurisdictions around the world, most offences involving the environment are prosecuted in lower courts (or dealt with by civil and administrative penalties), and most penalties are on the lower rather than higher end of the scale. This is partly a reflection of the range of sanctions available, the knowledge and expertise of the judiciary in dealing with environmental matters, and the nature of conventional adjudication practices that frequently do not devote sufficient time, energy and resources to complex cases that are tried at the lower level” (White 2013:269). Why study such an underutilized tool? The decision to focus on environmental crime, in part, was a fairly straightforward one: I am a criminologist, and therefore interested in studying crime. But, it was also influenced by the fact that although we have criminal provisions for nearly every regulatory environmental statute that we have, we rarely prosecute. I was driven by a desire to understand why criminal prosecution of environmental crime is so rare.

Applying criminal law to environmental harms is also difficult because environmental crime can be evaluated through a myriad of lenses: risk (precautionary principles), actual harms (how much a polluter has done), and also cost-benefit analysis (White 2013). It is also difficult

because many harms are not restricted to a single place, instead having local, state, and even global impacts (White 2010) and subsequently multiple potential jurisdictions. Burns and Lynch (2004:43) describe this reality:

When a behavior violates the penal code, we generally know where to look for a description of the infraction: in the state penal or criminal law statutes. Even though numerous behaviors are described in criminal law, we can find the law violation by using the criminal law index. When an environmental law is broken, however, the description of the rule of law and penalties could be in one of several different environmental statutes at the federal, state, or local level.

Accordingly, it can be difficult to determine what law to apply for any given environmental harm. Proving criminal harm also requires that a potential plaintiff has suffered injury-in-fact, or a concrete and actual harm. Such an injury is easy to prove where an act like a negligent spill is concerned, but more difficult in regard to slowly-devastating phenomena, such as climate change and everyday pollution, that only gradually (albeit at accelerating pace) alter the natural landscape and ecosystem (Babcock 2009). Environmental crime is furthermore often perceived as victimless. Victims may be unaware that they are victims, or the act or omission constituting an environmental crime may lack an obvious victim (Baird, Curry, and Cruz 2014; Wright 2011).

Beyond ambiguity of definitions and the difficulty of meeting the material conditions of crime in court, environmental crime is difficult to prosecute because it so often overlaps with legitimate and permissible environmental activity. In the US, criminal sanctions may potentially

be used when regulatory systems are violated, such as the Clean Water Act or Clean Air Act (Brickey 1996). Thus, criminal environmental law defines a threshold of acceptable versus unacceptable environmental behavior (White 2013). For example, while one may encounter illegal logging, logging in general is a permissible business, as opposed to human trafficking which is always illegal (Wright 2011). Illegal logging accounts for up to 10 percent of the global timber trade, exacerbating the already pressing issue of deforestation (Liddick 2011; EIA 2007). Other examples of illegitimate environmental crimes that operate alongside legitimate trades include waste crime (Baird, Curry, and Cruz 2014), clear-cutting of forests (White 2007), illegal fishing, and illegal hunting and trafficking of animal products (Beirne 2014).

As a result of the aforementioned difficulties, enforcement of environmental regulation via criminal pathways is irregular and punishments, if handed down at all, are relatively light (Sumi 2012). Enforcement agencies in the United States have been criticized for failing to investigate or prosecute difficult cases in favor of easier ones, and questions of mismanagement and corruption on part of enforcement agents persist (Brickey 1996). Additional challenges to enforcing environmental regulations include limited resources, unclear legislation that leaves too much discretionary power in the hands of EPA officials, and a lack of a consistent regulatory strategy by the EPA (Burns and Lynch 2004).

Scholars have noted that the pitfalls of criminal enforcement have in part led to the perpetuation, rather than the alleviation, of environmental harms. For example, on the matter of the BP Deepwater Horizon oil spill, Bradshaw (2015:390) writes, “The environmental disasters caused by the operation of the US offshore oil industry cannot simply be understood as isolated disasters, but are instead symptomatic of a broader criminogenic relationship between the federal government and the oil industry.” Incentives to pursue profits over environmental protections

combined with a lack of funding for regulatory bodies not only normalizes the environmental harm by failing to adequately sanction and deter the harm, but institutionalizes it as an unfortunate but necessary consequence of industry. As such, disasters such as Deepwater Horizon are inevitable outcomes of our current sociopolitical system, rather than harms law sets out to prevent (Bradshaw 2015). The failure of law to adequately respond to environmental harms leads to the following critique set forth by White (2007:36):

...it is important to distinguish (and make the connection between) specific instances of harm arising from imperfect operation (such as pollution spills), and systemic harm which is created by normatively sanctioned forms of activity (clear-felling of Tasmanian forests). The first is deemed to be 'criminal' or 'harmful', and thus subject to social control. The second is not. The overall consequence of this is that global environmental problems will become more serious and severe in the very midst of the proliferation of a greater range of regulatory mechanisms, agencies, and laws. This is something of a paradox but partly ingrained in the way in which environmental risk is compartmentalized: specific events or incidents attract sanction, while wider legislative frameworks may set parameters on, but nevertheless still allow, other ecologically harmful practices to continue. (White 2007:36)

White's perspective raises important questions for the task at hand: will attorney idealizations of environmental crime include both specific incidents of environmental harm as well as patterned

behaviors that contribute to the pressing environmental issues we face today? Investigating attorney constructions of ideal cases may indeed reflect this cultural reality.

Beyond legal hurdles of enforcing criminal provisions of environmental law, there are concerns of environmental justice as well. Responses to environmental harm are also classed and racialized. The whiter and more affluent a community is, the more likely it is to successfully resist polluting industries (Brisman 2007). Areas most affected by environmental pollution and toxins are disproportionately low income and often communities of color (Mohai and Bryant 1992; Pace 2005). In the United States, black individuals are 79 percent more likely than whites to live in neighborhoods with heavy air pollution, and residents of neighborhoods with heavy pollution are 20 percent more likely to be unemployed than those who do not live in similarly afflicted neighborhoods (Pace 2005). Low-income communities are three to four times more likely to be exposed to environmental hazards, and those communities with high minority populations are nine times more likely (Faber and Krieg 2002). Race and class matter when it comes to have cleanup as well; fines levied on polluting industries in white areas are on average 506 percent higher than in minority communities (Lavallo and Coyle 1992). Rather than developing pollution prevention strategies, current environmental protection strategies focus on risk management and distribution, which further benefits affluent whites at the expense of marginalized groups due to the fact that dirty industries will continue to be developed on dirty land (Bullard and Wright 2012; Lerner 2010). At stake in uncovering the nature of environmental harm is justice for these communities. In addition, sanctions for environmental harms are unequally distributed; penalties are higher when harms affect predominately white and middle and upper class areas than communities of color and lower class communities (Lynch, Stretesky and Burns 2004).

Analysts wonder whether sanctions, criminal or civil, can adequately deter environmental crime. The research is mixed on the efficacy of deterrence in regard to environmental crime, as it is in regard to more conventional crime. Specific harms can be, and largely have been, addressed with environmental criminal law, for example, pollution spills or illegal discharges (White 2007; Watson 2005). Karpoff and colleagues (2005) found that the potential for legal penalties such as large fines can deter environmental violations. Yet, legal sanctions seem insufficient for stemming everyday impacts of pollution. Watson (2005:191) writes: “It is one thing to discourage factories from discharging highly toxic waste into rivers. Ensuring that rivers become cleaner each year is a different proposition.” In investigating various strategies for responding to environmental violations, Brisman and South (2015:137) conclude that the most promising effective response would be “a multi-jurisdictional approach that seeks to strengthen the ‘enforcement chain’ and employ a range of prevention strategies,” including self-regulation, tailored enforcement and criminal prosecution depending on the specific violation.

The presence of criminal provisions within environmental statutes alone does not equate to an increase in prosecution or sanctioning of those who violate the law. The crime must also be detected, individuals must be arrested, and the decision to prosecute must be made (White 2010; Akella and Cannon 2004). Whether a crime gets prosecuted is related to: whether the prosecutor feels as though there is a benefit to prosecution, whether the act fits squarely into existing criminal statutes, the nature of public attitudes towards the alleged crime, and to the evidence (Akella and Cannon 2004). White (2010) calls for further research into all of these factors, which I aim to accomplish in this project by examining the stories attorneys tell of ideal cases of environmental crime. In the following section, I expand upon the notion of crime stories and what they tell us about crime, as well as our responses to crime.

Privileged Crimes: Insights from Criminal Justice

While traditional criminological perspectives purport to have a goal of explaining crime and criminal behavior, early critical criminologists have challenged this assumption, opting instead to view the justice system as an apparatus for maintaining the status quo. When the status quo is threatened, an increased emphasis is often placed on crime and crime control as a means of shaping public opinion to support crime control measures (Quinney 1974). The justice system also makes an effort to portray crime as a problem of poor and minority communities, as opposed to something experienced by wealthier classes (Reiman 1990). Just as in the context of environmental justice, certain actors in the criminal justice system are privileged. When considering a crime problem, we find certain representations of victims and offenders more favorable than others. Such ideological maneuvers have resulted in privileged populations, such as white, middle-to-upper class citizens, evading the label of “criminal” even when engaging in similarly or more harmful behavior than members of lower classes. Thus, the justice system is not designed to solve crime problems, but rather to uphold dominant power relationships in society (Reiman 1990; Quinney 1974).

Critical criminologists have long observed that some harms get criminalized, while others do not. Some have turned their focus to zemiology, which emphasizes harm instead of crime, opening up the potential for discovering new patterns in offending (Presser 2009). Investigating when environmental harms get labeled as “crimes” and when they do not is an important step in understanding a culture that allows grievous environmental harm to persist. A key aspect of the neglect of environmental harm has to do with knowledge and data. The Uniform Crime Report and the National Crime Victimization Survey, the two largest sources of official data on crime in the US, routinely report statistics on rates of murder, theft, rape, robbery, and other crimes

perpetrated directly, by one individual to another individual. No such consistent or reliable data set exists for corporate environmental harms, however (Collins, Munoz, and JaJa 2016; Garrett 2014). The lack of official attention to environmental crime data, coupled with the work of corporations to define environmental pollution as a normal consequence of production, has resulted in environmental crime being an understudied area of criminology. When environmental crimes are omitted from discussions of “crime problems” in the United States, they are also omitted from discussions of solutions to crime.

Research reveals that there exist culturally preferred representations of crimes. These receive greater media attention and subsequently are perceived as more legitimate than are other classifications (Barak 1994:32). These privileged crimes are often those that can be reduced to easily communicated contests between good and evil, where a clear distinction can be drawn between individuals who are in the right and individuals who are deserving of punishment (Greer 2007; Kappeler and Potter 2004). Such distinctions are generally made along existing lines of social privilege and power, where culturally powerful groups evade criminal responsibility and marginalized groups receive a disproportionate brunt of harm with little justice in return (Loseke 2003; Wiersma 1988). Act, perpetrator, and victim come together in a story.

Narrating Harm: The Effect of Crime Stories

Stories are an underlying latent theme in research on representations and perceptions of crime, pulling together the themes of act, offender, and victim. Labov and Waletzky (1967) conceptualize a story as a temporally ordered depiction of the experiences of two or more characters, and especially the actions they take and events that befall them leading up to and

following a complicating action. Stories explain action over time. Stories can become *institutionalized*, or repeated and legitimized by individuals, experts, and advocacy groups (Polletta et al. 2011); I am particularly interested in whether there exist institutionalized crime stories of environmental harm. Given that we have an adversarial legal system which requires clear assignments of blame and responsibility in order to establish guilt or innocence, understanding patterns of crime stories is paramount for understanding for whom justice can be achieved and when.

One element of the standard crime story is the existence of an “ideal” victim. Christie (1986) found that we are more accepting of certain innocent-seeming social groups as victims (e.g., elderly women, children) than others (e.g., young men). In assigning degrees of legitimacy to one’s victim status based on intersecting forces of race, class, and gender, a “hierarchy of victimization” (Greer 2007) influences who is more likely to be successful in court for the harms committed. For example, in cases of rape, survivors who violate stereotypes of innocence by voluntarily consuming alcohol or by dressing “provocatively” are often construed as complicit in their own victimization, and thus are more likely to be held responsible or partially responsible for the crimes committed against them (Weiss and Colyer 2010). In short, the farther a victim is from idealizations offered by the standard crime story, the more blame is attributed for the harm they experience.

Relatedly, standard crime stories construct sympathy-worthy *or* blame-worthy perpetrators. Blame-worthy perpetrators are more likely to be from marginalized groups. In a classic study, Chambliss (1973) found that adolescent boys from lower income neighborhoods were more likely to be labeled as “deviant” or “criminal” for the same behavior as adolescent boys from upper class neighborhoods. Sympathy-worthy perpetrators are often from privileged

groups. The wealthier class status of the latter group allows them to evade the criminal label in favor of a “boys will be boys” dismissal of their deviant behavior. For example, four affluent athletes from picturesque Glen Ridge, New Jersey, were given similar sympathy after they were convicted of raping a mentally handicapped girl in 1989. Some community members called the rape a “tragedy,” not for the survivor but for the futures of the perpetrators (Lefkowitz 1997:5). Similar sentiments persist today; in 2016, when Stanford swimmer Brock Turner was convicted of sexually assaulting an unconscious girl, he was given a sentence of just six months in jail and three years of probation from a judge who reasoned that harsher punishment would have a “severe impact” on the 20-year-old (Miller 2016). Relationships of power again inform perceptions of who deserves blame or sympathy; the more social privilege and power an alleged perpetrator has, the less likely he/she is to be seen as a perpetrator warranting punishment. Perpetrators must be easily recognizable (Peelo and Soothill 2000).

Understanding the “culturally shared shorthand” (Copes, Hochstetler and Williams 2008:255) with which victims and offenders are positioned is key to understanding a culture that promotes harm, especially when stories influence the outcomes of justice decisions. Crime stories that lack ideal victims are less likely to achieve convictions in court (Greer 2007). Idealizations also enter the courtroom by way of what Steffensmeier and colleagues (1998:766) have termed the “focal concerns” impacting judicial decisions. Three focal concerns are: “the offender’s blameworthiness and the degree of harm caused the victim, protection of the community, and practical implications of sentencing decisions” (Steffensmeier et al. 1998:766). The authors found that stereotypes of victims and perpetrators may intertwine with each of these focal concerns, influencing the extent of culpability of the offender and the need for harsh punishment. Because of stereotypes of criminal propensity, black men are sentenced more

harshly than white men, and black women are sentenced more harshly than white women (Steffensmeier et al. 1998). In other words, it is the stereotype of perceived criminality attached to particular offenders that influences how the focal concerns are approached by judges, often unconsciously. Such stereotypes are often assigned to marginalized groups, while privileged social groups evade scrutiny. Press coverage of trials, especially high profile crimes, such as murder trials, can create bias of jurors against defendants in criminal trials (Peelo and Soothill 2000).

Good crime stories include relatable victims. But often, environmental offences have “obscure victims” (Korsell 2001:127) with which the public has difficulty identifying. As a result, corporations have an easier time breaching environmental regulations and getting away with it (Korsell 2001). When toxic chemicals are found to be affecting humans, there is often debate over causation and determining how much the toxic chemicals affect humans. This does not simply look at scientific evidence, but political and social constructions of the reality between the link of toxic exposure and human health matter. In other words, even without scientific evidence, stories that detract attention away from toxic chemical exposure can shape our perceived reality (Reich 1991). Yet, stories also have the power to challenge common definitions of environmental harm. For example, the introduction of the term theriocide to describe the array of human actions which cause death to animals is a trope that effectively counters hegemonic narratives that cast only humans as victims (Beirne 2014). Apocalyptic narratives, stories of impending end times of Earth and all those who live on it, may be effective for mobilizing environmental activism (Veldman 2012).

Chapter Summary

We presently face a vast range of dire environmental challenges, including climate change, air pollution, water pollution, deforestation, species extinction, and waste production and management. Environmental harms are inequitably distributed across populations and disproportionately affect working class and low-income communities, communities of color, indigenous communities, and other marginalized groups (Bullard 1993). It is not enough to simply document these harms; an investigation into how our culture allows environmental harm to occur with impunity is necessary.

Criminalization is one tool for responding to environmental harm. It is by no means a perfect one. Ambiguity in definitions of environmental crime, overlap with legitimate industry, and difficulties in determining the extent of harm and intent to commit harm make prosecution of environmental crimes difficult to conduct. While law is commonly thought to be a neutral arbiter tasked with uncovering the truth of alleged crimes, it is likely that culturally accepted notions of victims and perpetrators outweigh objective facts about harm and parties to it (Davis 2007; Williams 1991). We may wonder if in environmentalist struggles, structural hierarchies are reproduced or contested. Insofar as such struggles are waged via law, we can ask how structural hierarchies enter into legal cases, and how they shape the characterizations and narratives of winning cases, developed by environmentalist lawyers. This project was designed to clarify how attorneys construct stories of environmental harm in order to understand whether or not there exists shared cultural understandings of environmental harm. Past scholarship in the area of criminal justice and environmental justice reveals that certain crimes are privileged over others, however, to date, no study has been conducted on attorney stories of environmental harm. This is

especially important given the direct role that attorneys play in constructing courtroom narratives.

Chapter 2 elaborates on the theoretical focus of my project. I connect green cultural criminology and narrative criminology in order to investigate the ways harm gets recognized – or misrecognized – via stories told by attorneys. In other words, naming environmental harm as a type of criminal activity is culturally negotiated process that is forged through the telling of stories.

Narrative undergirds both my theory and method for this project. Chapter 3 outlines the methodological importance of narrative for social science research, and describes narrative analysis as my specific method of data analysis. Stories were discerned in qualitative, semi-structured interviews with fourteen attorneys with experience in environmental law.

Chapters 4 through 6 discuss three main stories related in the interviews, concerning, respectively, low-hanging fruit, the state as an agent of harm, and agentless environmental harm. Low-hanging fruit stories highlight the most direct and visible forms of environmental harm. Here, a bad actor directly violates written law, for example by dumping some form of waste into the land or water. Often, there is an effort to conceal the harm being done, either by dumping at night (literally under the cloak of darkness) or by lying. Thus, low-hanging fruit cases are easily recognized, easily proven, and easily prosecuted by criminal environmental law. Respondents generally characterized “low hanging fruit” as a thing of the past. Chapters 5 and 6 discuss smaller, more nuanced stories of environmental harm, via which respondents speak about the historical present. These are stories that cast the state, often metaphorically, as the main agent of harm (Chapter 5), and stories that collectivize harm-doing, treating it as most typically inflicted by the state or general public, rather than a corporation (Chapter 6). In effect, these stories

obscure actual environmental harms, as well as responsible parties, and thrust victims to the sidelines. They render environmental harm today as negligible or at least as less concerning than the harm caused by enforcement agencies.

CHAPTER 2

THEORIZING ENVIRONMENTAL HARM: TRADITIONAL, GREEN, AND NARRATIVE CRIMINOLOGIES

The phrase environmental harm conjures images of oil slicks and smokestacks belching brown and black plumes into the sky. It reminds us of names such as Love Canal, Bhopal, Exxon Valdez, and Deepwater Horizon, now solidified in public memory as some of the costliest and deadliest environmental disasters in history. It makes us think of Rachel Carson's *Silent Spring*, noted earlier, and the unfettered use of harmful chemicals and pesticides in our food sources. These are the stories we tell of environmental harm. Stories help us to make sense of the world. They organize information, construct prototypes and tell us how to feel about specific events.

Crime stories are no different than other stories. We relate to the law largely through telling stories (Ewick and Silbey 1998). New scholarship in the field of narrative criminology has taken up the notion that stories are constitutive of crime (Presser 2009; Presser and Sandberg 2015). That is, not only do stories have the power to organize and relay information about specific crime events, but they also shape criminal behavior, as well as other harm, in the future. When certain stories are repeated over time by trusted experts, they become part of common sense knowledge, taken for granted assumptions about how the world works (Polletta et al. 2011). Thus, they shape how we define a particular crime problem, and how we define a particular problem as a crime. When an allegation of a criminal event happens that fails to fit such a story, we are less apt to define the act as a crime. An example of this in action is in the deployment of apocalyptic narrative when speaking about environmental crime. By framing

environmental issues as if failure to act will bring about the end of the world, apocalyptic narratives of environmental harm may motivate activists to get involved (Veldman 2012).

Neglect of criminological focus on environmental harm can also be attributed to its indirect nature. Compared to traditional street crime, environmental harm is broader in scope, motive, and degree of harm incurred, and each of these factors is difficult to measure physically or see. For example, environments may be harmed through invisible pollutants, the depletion of resources which ecosystems depend upon, or through a slow buildup of toxins in the body. Because these harms can be slow to manifest into visible consequences, many evade recognition altogether or are conflated with natural health issues (Brisman and South 2013a; Cranor 2013).

What is more, it is often very difficult to trace causes of environmental harm to the actions of an individual perpetrator (or even several perpetrators). Environmental harms result from a wide variety of collective actions, such as consumer demands for convenient plastic to-go containers which pile up in landfills, employees working together to operate a plant which pollute the air as a consequence of production, or collective resistance on part of the automobile industry to meaningfully invest in cars which run on alternative fuel sources (South and Brisman 2013). While we can argue that the consumers who buy and use harmful disposable products have a far different – lesser – role to play in environmental harm than the plant manager who signs off on the illegal dumping of toxic waste, determining accountability for environmental harm gets muddled quite quickly even where the “front line” – of agents other than consumers – are concerned. In an adversarial legal system that must assign blame before a verdict can be reached, it is difficult to state where blame should lie. In short, we are all implicated in environmental harm by virtue of living and participating in our capitalist social system.

Both the study of environmental harm and the study of stories are relatively new to criminology, and there is much to be gained by studying them in conjunction. Rather than starting out from the assumption of crime as an action which violates some law, “green criminology begins by problematizing the nature of crime: how is it defined, by whom, and with what purpose(s) and effects? Which harms are defined as crimes? Which are not? Which harms are defined as both harmful and criminal? Which are neither?” (Beirne and South 2007:xiv). My project takes up these questions specifically regarding attorneys and their stories. The current project makes a valuable contribution to both narrative and green criminology by examining attorneys’ stories of environmental crime. I take the view of narrative criminology that stories are constitutive of behaviors. Given the role that attorneys play in shaping how law is carried out, their stories are important to document. In this chapter, I begin by exploring traditional criminological theories on crime as they may be applied to environmental harm. I then introduce green cultural criminology, followed by narrative criminology. These are conjoining frames of the project.

Traditional Criminological Perspectives on Environmental Harm

Three major theoretical paradigms are seen in sociological criminology: strain, control, learning theories. Broadly speaking, strain theories ask why individuals commit crime, and are concerned with adaptations which occur when one is blocked from achieving culturally prescribed goals. The control paradigm, conversely, asks why individuals do not commit crime, and is centered around the idea that constraint is a hedge against crime. Learning theories question how individuals learn to commit crime, and explore the introduction of positive and

negative stimuli, to build up positive associations with conformist behavior and negative associations with criminal behavior, respectively. Within these paradigms, certain general theories have emerged, purporting to explain all types of crime. No one general theory has withstood empirical testing for all criminal behavior, despite efforts at doing so. Canonical criminological theories seldom address environmental crimes. This neglect should not be surprising given that the early theories of the discipline – strain, control, and learning theories – focused predominantly on illegal behavior. Most legislation in the U.S. criminalizing environmental harm would not be introduced until the 1970s and 1980s. In addition, the level and scope of environmental degradation looked much different back then, and many harms had yet to even be uncovered. It is important to address these beginnings when concerning what has been left out of mainstream criminology, especially considering the goal of contemporary critical and cultural paradigms is to challenge traditional notions of what is criminal.

Learning Theories. Social learning theories in criminology refer to the notion that criminal behavior is learned via interactions with others, primarily through the introduction of positive or negative responses to encourage good behavior and deter problematic behavior, respectively (Akers and Sellers 2009). While learning theories have been used across a range of disciplines, including psychology and sociology, in criminology, they gained importance with Sutherland's differential association theory. Social learning theory today "proposes that criminal and delinquent behavior is acquired, repeated, and changed by the same process as conforming behavior" (Akers and Sellers 2009:120).

Sutherland offered his differential association theory, which "is that criminal behavior is learned in association with those who define such criminal behavior favorably and in isolation from those who define it unfavorably, and that a person in an appropriate situation engages in

such criminal behavior if, and only if, the weight of the favorable definitions exceeds the weight of the unfavorable definitions” (Sutherland 1983:240). Given that learning could take place within any group, Sutherland surmised that white collar offenders could learn their actions from peers, similarly to street level offenders. Given that some corporate firms that contribute to pollution have an economic incentive to break the law – meaning, sometimes violating environmental law yields a larger return on investment with minimal risk hence firms anticipate that it is cheaper to pay fines rather than to comply with the law – the learning perspective may be applied to environmental crime. There are also rational reasons to not break the law, however, such as to retain operating licenses, remain in good standing with the public, and avoid expending the time and resources of trial (Watson 2005:192).

Sutherland’s work in the late 1940s was vital for turning criminology’s attention to white-collar crime, which he defined as “violations of law by persons in the upper socioeconomic class” (1949:7). With this broad, and certainly contestable definition, Sutherland allowed for the inclusion of harms against the environment at the hands of corporate and state actors. Sutherland’s (1949) *White Collar Crime* is a staple piece for those interested in studying environmental harm. Sutherland did not consider harms against the environment directly in this work. It was a pivotal moment for introducing to criminological scholarship the notion that crime was not simply a problem of lower-class, urban youth. Indeed, he pointed out that white-collar crime involved greater economic loss than street crime (Sutherland 1983:9), even as white-collar offenders were less likely to be treated as criminals than those who had committed street crimes.

Strain Theories. Anomie/strain theory was first articulated by Robert K. Merton (1938). It gained immediate popularity and was especially influential in the 1950s and 1960s. The idea that crime and deviance results from strain caused by an inability to achieve material success makes

sense at face value. For Merton, deviant behavior was one adaptation to strain which results from the interaction between social structure and culture. Specifically, each society has a set of prescribed goals that members of that society are pushed to strive to achieve. Not every member is given equal access to the socially approved means to obtain those goals, however, because of their various places within the social structure (e.g., a lack of access to quality education or jobs with room for economic growth). For Merton, American society privileges economic or material success. Not every American is afforded the same opportunity to achieve success through conventional means such as higher education and/or job opportunities with room for growth, however. When structural forces block individuals from achieving goals, strain is produced (Merton 1938).

The presence of strain does not immediately signify that crime or deviance will occur. According to Merton, individuals develop adaptations to strain that only sometimes result in deviance. He outlined a typology of five adaptations to strain: conformity, innovation, ritualism, retreatism, and rebellion (Merton 1938:676). *Conformity* is the most common response; it involves accepting both the goals prescribed by society and the means to achieving them. Societies with greater economic opportunity are likely to produce less strain, resulting in greater conformity and lower rates of crime and deviance (Merton 1938).

Innovation, ritualism, retreatism, and rebellion are various, potentially deviant, responses to strain, with innovation being the most common deviant response. *Innovation* occurs when one accepts culturally prescribed goals, but rejects acceptable means to achieve them (e.g., selling drugs as a means to achieve monetary success). *Ritualism* occurs when members give up on achieving the goals, but continue to stringently follow acceptable social norms to get by. *Retreatism* represents a form of escapism in which one “drops out” of society by rejecting both

the goals and the means (which leads to illegal responses, such as addiction or vagrancy, and legal responses, such as living off the grid). The adaptation of *rebellion* also entails rejection of both the goals and the means, but advocates for replacing them with a completely new set (e.g., political revolution) (Merton 1938; Akers and Sellers 2009).

Strain theory experienced a revival in the 1990s with Agnew's general strain theory, an attempt to address the aforementioned critiques of Merton's classic strain theory and to render a more widely applicable approach – inclusive of interpersonal and not merely financial frustrations. In particular, Agnew sought to answer the question of why individuals who occupy similar places in the social structure could develop different adaptations to strain. General strain theory remains the most influential revision of classic strain theory to this day.

Rather than focusing on one source of strain (i.e., the inability of an individual to achieve conventional goals via conventional means), Agnew focused on three sources: "Other individuals may (1) prevent one from achieving positively valued goals, (2) remove or threaten to remove positively valued stimuli that one possesses, or (3) present or threaten to present one with noxious or negatively valued stimuli" (Agnew 1992: 50). Positively valued stimuli can refer to anything which an individual enjoys or values. Negative stimuli include stressful life events such as loss of a job, death of someone close, abuse, bullying, or criminal victimization. General strain theory thus maintains Merton's original social-psychological focus, blending the adaptations of individuals with structural forces which can produce strain, but extend it. While a bit of parsimony from Merton's original formulation is lost, general strain theory creates more opportunity for application of the theory.

Variants of anomie/strain theory have also been applied to white-collar offenses. According to Merton's (1938) classic version of strain theory, crime is a potential adaptation to

strain felt when structural barriers impede access to culturally prescribed goals. In American society, cultural goals are characterized by an emphasis on material wealth as a measure of success (Merton 1938). That strain theory could apply to white-collar crime seems counterintuitive given the elevated status and comfortable positions of most white-collar offenders. Seemingly, they represent those who have already achieved material success, and thus who are unimpeded by structural barriers to wealth. However, evidence shows that strain operates relatively within classes, and that satisfaction with monetary status is a better predictor of strain than measures like household income (Chamlin and Cochran 1995:414; Agnew et al. 1996).

Keeping in mind that strain can operate regardless of class status or income, anomie/strain theory provides some potential for explaining white-collar offenses. Studies testing its application show that strain has been found to predict financial motives for white-collar crime (Langton and Piquero 2007). Recently, Agnew (2012, 2011) has applied strain theory to large environmental problems, such as climate change. He suggests that, as climate change continues, strain will increase at both micro and macro levels due to stressors such as impaired physical health of individuals, damaged infrastructure, or largescale economic consequences, leading to a social environment favorable to criminal responses such as illegal migration, or the violation of environmental protection laws (Agnew 2011). By devoting efforts to alleviating the sources of strain caused by climate change, we stand a better chance at reducing the criminogenic social environment which results (Agnew 2012). Given that strain theory rests largely on felt experiences, however, it has unclear relevance to those harms individuals are unaware they are complicit in committing.

Control Theories. Control theories begin from the foundational assumption that all individuals have the same propensity to commit crime, but various social controls prevent that from taking place (Akers and Sellers 2009). Gottfredson and Hirschi's (1990) self-control theory is the most often cited example of the control paradigms. It is also the most-cited and most-tested general theory of crime, claiming to be able to account for all criminal behavior that would exist (Akers and Sellers 2009). Self-control theory states that criminal behavior can be predicted by an individual's level of self-control, which is solidified in childhood via parenting. Individuals with low self-control are more likely to engage in criminal behavior than those with higher levels of self-control (Gottfredson and Hirschi 1990). Gottfredson and Hirschi presented their general theory of crime as applicable to all individuals regardless of their status in society. Because crime ultimately stems from a lack of self-control – a tendency to act impulsively and for immediate gratification – Gottfredson and Hirschi's (1990) general theory of crime predicts that white-collar offenders will be as versatile in their offenses and as prone to deviance as street-level offenders (Benson and Moore 1992:252; Gottfredson and Hirschi 1990:190-191).

Benson and Moore (1992) undertook an empirical test of the proposition that white-collar offenders would be as diverse in offending as street-level offenders and that white collar offenders engage in analogous deviant behaviors just as often as street-level offenders. They did so by comparing the criminal records of white-collar and street-level offenders and their degree of participation in deviance. The white-collar offenses measured include bank embezzlement, bribery, income tax violations, false claims and statements, and mail fraud (Benson and Moore 1992). They found that the general theory of crime received partial support: the more white-collar offenders engaged in crime, the higher their rates of involvement with deviance would be. In addition, they did find significant versatility in white-collar offending. The theory did not,

however, receive full empirical support, because white-collar offenders were generally far less involved in crime and deviance than conventional offenders (Benson and Moore 1992:265).

Although Gottfredson and Hirschi's general theory of crime is unique in its unsettling of the distinction between white-collar and street level offenders, evidence supporting its applicability has not been strong, and it is rarely tested for environmental crime (Stretesky, Long, and Lynch 2013). Several foundational assumptions would be problematic for applying this theory to environmental crime. First, the focus of Gottfredson and Hirschi's theory is on the individual and his or her personality, excluding the organization or corporation from any form of analysis. The theory also assumes that individuals who commit crime have low self-control and thus are less likely to commit to long-term goals of success, engaging in crime for short-term benefit. This neglects the fact that individuals who work for corporations engaged in environmental crime can, and often are, committed to the goals of the company, with the goals resulting in environmental harm (Stretesky, Long, and Lynch 2013). A focus on short-term benefits of crime also neglects the fact that some crimes, including environmental violations, are planned in advance and carried out over long periods of time, such as months or years. Stretesky, Long, and Lynch (2013:9), in critiquing the use of individual levels of self-control to explain environmental crime, state the following:

If individual self-control were the main cause of ecological disorganization, it becomes difficult to explain the tendency for environmental crime related to ecological disorganization to increase over time, as it is unlikely that there is a global explosion of individuals with low self-control. In short, we argue that the question is not, "What causes an individual (or set of individuals)

to engage in acts that harm the environment?” Instead, the more important question is: “How does the organization of society promote an increasing level of environmental harm?”

The latter question cannot be answered simply by studying individuals and their psychology or social backgrounds. Control theories fall short in explaining crimes against the environment committed by aggregates and they also neglect the socioeconomic incentives for engaging in such crimes.

In sum, the traditional learning, strain, and control paradigms which dominate criminological discourse work from traditional legal conceptions of crime as direct, violent action between one or few offenders and one or few victims. These theories fall short in addressing those harms that most frequently threaten the lives of individuals and communities, such as harm incurred from environmental destruction outlined in chapter 1, although there have been some attempts to apply the theories to environmental crime (Brisman 2014; Ray and Jones 2011; Sollund 2011; Agnew 2012, 2011; Simon 2000). Critical scholars in criminology address harms neglected by traditional paradigms. A harm perspective incorporates transgression and injury, not just legal violations (White 2007). It challenges the traditional notions of criminality. “Street crimes are a smoke screen behind which far more deadly, costly, and serious crimes take place. By any measure of harm, the crimes of police, politicians, the state, and corporations far outstrip the ordinary crimes of the poor” (Chambliss 1999:155). The current project adopts the lenses of green cultural criminology and narrative criminology, to which I now turn my focus.

Green Cultural Criminology

Green cultural criminology is a theoretical perspective that foregrounds the intersections of culture and crime as it concerns the environment (Brisman and South 2014; Brisman and South 2013a). It takes from green criminology a concern for harms against the environment and an attention to the way that the state and other powerful actors allow for the perpetuation of environmental harms by influencing definitions of what counts as environmental crime (White 2011). From cultural criminology, it integrates the understanding that definitions of crime are mediated through images and collective understanding (Ferrell 2013). In what follows, I outline both green and cultural criminology. Then, I elaborate further on green cultural criminology.

Green Criminology. Lynch (1990) is often noted for first articulating a call for “green criminology” in the 1990s in an attempt to unite a myriad of scholars already concerning their research with environmental harms. Although this was the first call in English for the new subfield, concern for environmental issues (e.g., the management of toxic waste, poaching, illegal fishing) or “green thinking” (Goyes and South 2017:168) had already appeared in scholarship in such areas as criminology, social problems literature, and political economy (Goyes and South 2017). From these loose beginnings, myriad definitions have been offered for contemporary green criminology. South and colleagues, for example, refer to it as “the study of ecological, environmental, or green crime or harm, and related matters of speciesism and of environmental (in)justice” (South et al. 2013:69). A common observation of green criminologists is that law is unable to provide adequate protection for the environment and its inhabitants. Law defines crime too narrowly, they note, focusing almost entirely on identifying direct harms committed by individual perpetrators who can be linked directly to individual victims. This neglects the web of structural forces that contribute to the spread of environmental harm, as

discussed above (South et al. 2013; Lynch 1990). Like environmental justice advocates, green criminologists recognize environmental harm as one facet of an exploitative and unjust social structure. Environmental crime, according to a green criminological perspective, then, can be defined not simply by objective legal statutes, but also as a living embodiment of social attitudes regarding our relationship to the environment.

Green criminology has largely focused on describing how, why, and the ways in which environmental harms occur, as well as who, be it individuals, organizations, or states, shares responsibility for perpetuating such harm (e.g., Lynch & Stretesky, 2003; White, 2003). Green criminology is also concerned with identifying *where* such harms are occurring, *who* is being harmed and the scope and extent of such harm (Eman, Meško, & Fields, 2009; Halsey & White, 1998; South, Eman, & Meško, 2014), and the *meaning* and *representation* of such harm (Brisman, 2015; Brisman & South, 2013a, 2014a; Brisman, McClanahan, & South, 2014). But, as White and Heckenberg (2014: 2) remind us, “knowing about the damage and about criminality is one thing. [...] In the end it is how groups, organizations, institutions and societies respond to environmental harm that ultimately counts.” Accordingly, green criminology has considered the diverse and complex attempts to protect the environment and nonhuman animals and to prevent climate change, natural resource depletion, loss of biodiversity, pollution, and the like (see South et al. 2013) – a task confounded by the fact that ecologically destructive acts are often necessitated by persistent encouragements of growth by capitalism (Brisman and South 2015:131).

Brisman and South (2007:xiii) subsequently define green criminology “at its most abstract level (as) the study of those harms against humanity, against the environment (including space) and against non-human animals committed both by powerful institutions (e.g.,

governments, transnational corporations, military apparatuses) and also by ordinary people.”

Green criminologists pay particular attention to the intersection of modern political, economic, and cultural forces in the maintenance of such harm (Brisman and South 2013a; White 2007).

International and intersectional, green criminologists utilize perspectives gleaned from fields beyond criminology, such as environmental justice, ecology, sociology, toxicology, and law.

Concerning the range of interests covered by this perspective, South (2007:231) remarks:

“Proposing a green perspective for criminology is about more than simply adding a new perspective within criminology, it is a call for inter-disciplinary awareness and collaboration.”

The multifaceted research interests of green criminologists include, but are certainly not limited to, harm against animals (Pellow 2013; Beirne 2007); climate change (Agnew 2014; Wachholz 2007); intersections of economy and environmental crime (Walters 2014; Greife and Stretesky 2013); and the illegal handling and disposal of toxic waste (Walters 2007; Brook 1998);

environmental justice and inequity (see Pellow 2013; Lynch, Stretesky and Burn 2004; Stretesky and Lynch 1999; Stretesky and Hogan 1998); ecological justice and conservation efforts, such as with the examples of exposing illegal wildlife trade or animal testing (Pellow 2013); and the economic causes of environmental degradation (Greife and Stretesky 2013; Ruggiero 2013; Gaarder 2013; White 2013).

Cultural Criminology. In the 1990s, cultural criminology emerged as a theoretical strand which seeks to foreground the importance (and influence) of culture as a mechanism by which definitions of crime are created and crime control measures are enacted. The production of meaning stems from roots in the labelling perspective, symbolic interactionism, and media studies (Ferrell, Hayward, and Brown 2018). Cultural criminology focuses on how power is both enacted and resisted through the construction of crime, building from past constructionist

research in sociology (Ferrell, Hayward, and Young 2008; Ferrell 1999). Rather than adopting taken-for-granted definitions of crime (e.g., the “criminal” act is one which violates a law, a beginning proposition of early mainstream criminological theories), cultural criminologists center images, representations, and other cultural artifacts for their role in persistently (re)creating definitions of crime and deviance (Ferrell, Hayward, and Brown 2018).

Defining criminality, for cultural criminologists, is a process intrinsically linked to our affective responses to sights, sounds, smells, and other sensory experiences of crime. Take, for example, the following quote from Ferrell, Hayward, and Young (2008:7):

Amidst the cultural motion of late modernity, here’s one movement you might not think of as cultural at all: the quick, snapping trajectory of arm, elbow and fist as a punch is thrown. That movement seems more a matter of bone and muscle than culture and meaning – and if that punch strikes someone in the mouth, there are bloody knuckles that are pulled back in the next motion.

A punch is an immediately recognizable form of violence. Reactions to its violence vary depending on the context – cheers and jeers at the boxing match, bystander interventions at the bar fight, fear and disgust (and all too often silence) in the home. Ferrell, Hayward, and Young deploy the image of the punch as a means of highlighting the way our understanding of and reaction to violence is culturally negotiated, a process of seeing and making meaning from the imagery of the punch being thrown. In other words, our emotional reaction to the punch – from excitement and thrills to disgust and hatred – depends not on the punch itself, but on the context in which it is thrown in.

Crime, and criminal justice besides, are socially constructed based on cultural imagery (Apsden and Hayward 2015; Ferrell, Hayward, and Young 2008; Ferrell 1999). Images of crime are shaped by experiences with crime, and as such influence future crime actions (Ferrell 1999). This relates not only to an individual's direct experience with crime and crime control (e.g., security officers, police officers, or the courts), but also with representations of crime circulated in popular culture, such as via television shows, music videos, or film. Other criminologists (see Hayward and Presdee 2010) have focused on how crime gets represented through visual images. In sum, crime is most salient to individuals when it evokes familiar sights, sounds, and emotions from the observing public (Ferrell, Hayward, and Young 2008; Ferrell 1999). Cultural criminologists have been seeking to understand the relationship between cultural artifacts and the construction of criminal action, specifically regarding the meanings of various images and styles closely associated with criminal behaviors.

This project is particularly attuned to the way in which cultural criminology highlights processes of inclusion and exclusion (Ferrell, Hayward, and Brown 2018). In other words, cultural criminologists have sought to uncover how some individuals can evade the label of "criminal" while others are assigned it readily, regardless of whether or not a crime actually took place. In part, uncovering how (particularly marginalized) groups are included in labels of crime and deviance took place through studying transgression (Ferrell, Hayward, and Young 2008; Young 2003; Ferrell 1999). By closely examining transgressions, boundaries of acceptable versus unacceptable social behavior are illuminated. Beyond just focusing on what types of behaviors are criminalized, cultural criminologists also highlight which are absent from the criminal label (Ferrell, Hayward, and Brown 2018; Brisman and South 2014). Often times, actions which get labeled criminal are everyday behaviors that have been criminalized in order to

further marginalize groups, such as the poor or working-class citizens (Ilan 2011; Presdee 2009). Through investigating transgressions, even those small, everyday acts such as loitering or graffiti, cultural criminologists seek to find the “momentous in the momentary” (Ferrell 2013:360), from which green criminologists interested in everyday environmental harms can benefit from. In the following section, I turn my attention to the way that the concerns of both green and cultural criminology overlap to form the foundation for this project.

Green Cultural Criminology. A primary critique of traditional criminological theories in addressing harms against the environment is that often, environmental crimes do not fit standard definitions, nor do their offenders fit standard conceptions. As critical theories, both green and cultural criminologies begin by challenging traditional crime definitions, and in doing so, assert that environmental crimes can and should be considered by criminologists (Brisman and South 2014; Ferrell 2013). Brisman and South (2014) called for a uniting of the interests of both green and cultural criminology into a green cultural criminology. Green cultural criminologists are concerned both with the mediated processes of defining environmental crime, the influence of culture and politics on definitions of environmental crime, and with highlighting the way that everyday actions of individuals, such as overconsumption, result in largescale environmental harm (Brisman and South 2014).

Green cultural criminology challenges how our dominant culture has historically legitimized or masked, via taken-for-granted representations, the violence of environmental harm (Brisman and South 2013a, 2014; Ferrell 2013; Walters 2013; Ruggiero and South 2010; Fitzgerald and Baralt 2010). Walters (2013:142) writes: “When environmental harm is contextualized within concepts of deprivation, damage, and dislocation that disrupt, devalue or eliminate the habitats and lives of human and non-human beings, then such environmental harm

can be conceived of as both aggressive and violent.” Reframing crimes against the environment as violence serves to disrupt dominant (e.g., corporate) social characterizations of environmental harm as an unfortunate but necessary byproduct of business as usual. Some industries are by nature criminogenic; considerations of how we structure and organize social life in ways that may promote environmental harm is lost upon traditional criminological theories.

Research under the purview of green cultural criminology seeks not only to uncover how environmental crimes are framed and represented, but how criminologists may engage in a reframing of these harms that acknowledges the violence of environmental crime and the failures of traditional modes of justice to curb said violence. Ferrell (2013) describes an exploration of modern consumer culture, such as an examination of the distaste of and criminalization of resisting activity such as trash scrounging and freeganism, as a meeting point of green cultural criminology. Brisman and South (2014) offer news analysis of real environmental crimes along with fictional depictions of the relationship between humans and the environment as two additional spaces where this confluence can be observed.

This project is concerned primarily with meaning and representation of environmental harm, as told through narratives. The representation of environmental crimes is something that had previously been neglected within green criminology, which was more focused on documenting the existence of and effects of environmental harm. In the next section, I turn my focus specifically to the development of narrative criminology, and the use of narrative in advancing the theoretical work of green cultural criminology. However, green criminology would benefit from more overarching studies including studies of the cultural processes that sustain green harm, with narrative serving as an optimal site for revealing those cultural processes.

Narrative Criminology

We experience the world through stories. Stories help us orient our experiences into coherent narratives of our lives, and shape our expectations and understandings of future actions. Frank (2010:665) defends stories as occupying an exceptional place in the human existence. He writes:

Stories enjoy an exceptional place in human lives, first, because stories are the means and medium through which humans learn who they are, what their relation is to those around them (who counts as family, as community, and as enemies), and what sort of actions they are expected to perform under which circumstances. Stories teach which actions are good and which are bad; without stories, there would be no sense of action as ethical.

Narrative analysis is thus a useful tool for green cultural criminologists as a way to penetrate culture. Stories are put to a multitude of uses in social life. They are fundamental means by which we come to know and understand ourselves and our social worlds, and thus are key in shaping our perceptions of what is acceptable (Sandberg 2016; Copes et al. 2008; Presser and Sandburg 2015; Presser 2009). Narrative criminology has emerged as a field devoted to uncovering how stories and storytelling influence harm-doing or resistance. The main insight of narrative criminology is that narratives are constitutive of crime (Presser 2009). It is not just that we tell stories about crime, in news media or pop culture for instance, but that stories themselves shape “crime.”

Theoretically, narrative criminology may be considered an offshoot of cultural criminology. Narratives have always been a part of cultural constructions of crime: “as long as society has recognized the concept of crime, a shadow process of making sense of criminal transgression has followed through autobiographical narrative exploration” (Aspden and Hayward 2015:235). Both narrative and cultural criminology are broad and multidisciplinary in their purview. Narratives, are among other things, the way in which we understand what happens and what is done – including “crime.” We fear “graffiti” for its associations with gangs and disruptive neighborhoods, yet praise “street art” for the edgy beauty it can bring to hip communities. City night clubs and bars construct dress codes which ban plain colored T-shirts or baggy jeans while trendy stores utilize urban fashion for expensive collections for middle to upper class youth. And we expect to see prison shows filled with people of color and those from lower classes, unkempt with scratchy tattoos, not pretty young blondes. In each of these cases, a story gives meaning to the clothes, the tattoos, the art in question. Critical examination of who is creating these stories, how they are represented in the media, and how they impact our attitudes, behaviors, and perceptions is key to understanding crime and society. Narrative, much like cultural criminology, draws in part from traditional criminological theoretical concepts such as labeling theory in constructing identity. Here, actors borrow from culture to construct the world and their behaviors (Presser and Sandberg 2015). Narrative attention to discourse is its key point of distinction from cultural criminology (Presser and Sandberg 2015), although it can be seen as one piece of cultural criminology’s larger focus on crime being a cultural product.

Narrative and *story* are at times used interchangeably, though narratologists do assign them different meanings (Presser and Sandberg 2015). This project treats them synonymously. Narratives/stories are important for several reasons. First, they provide explanations for one or

more series of events in our lives, and they give coherence to those events, (Presser and Sandberg 2015). Second is that they have the potential to influence future behavior, insofar as we often want our future experiences to cohere with past experiences (Presser and Sandberg 2015). Third, the evaluation of a narrative, or the part that gives meaning, is often left ambiguous as a means of persuasion (Polletta et al. 2011). Ambiguous references presuppose listeners will fill in the blanks with their own experiences (Machyn and Mayer 2012). This can be used to reproduce common sense or hegemonic ideas about the social world, but also to challenge them.

Stories have an impact on our perceptions and understandings of crime in a way that can both counter and promote harm. Berger and Quinney (2005:10) note that “a compelling story connects personal experience to public narratives, allowing society to ‘speak itself’ through each individual.” Similarly, crime stories which garner the most intense public reactions are those to which individuals can most relate. In the aftermath of Hurricane Katrina, the story of looting became proof that New Orleans was in a crisis, which delayed efforts for relief as criminal justice agents had to come in to stop the looting problem first before aid could be given to those “deserving” of it. This story was told and retold by the media and police, shaping public understanding of the problem taking place in New Orleans (Berger 2012). Rape myths, in turn, often shape expectations for what rape ought to look like, so stories that do not fit these standards are discounted and not seen as legitimate (Weiss and Colyer 2010). Stories of drug use can motivate people to use drugs (Sandberg and Tutenges 2015) or to desist from drug use (O’Connor 2015). The media draws upon stories that rouse fear or anxiety in crowds in order to define what values the legal system wishes to protect and uphold (Peelo and Soothill 2000).

The relationship between narratives and the influence they have on us is reflexive. Just as we influence the outcome of the narrative in our construction of it, so the narrative influences the

outcome of our future behavior (Presser 2008). Through stories, we are able to form cohesive pictures of society, linking past events to the present. They help us to illustrate our hopes for society as well as our place within it. The ability to link the past, present, and future through stories is a powerful tool of learning, specifically in regards to moral questions of right and wrong (Presser 2008). Criminalization of various actions, then, is a process centered around how actions compare to the narratives of right and wrong by which we currently abide by. Narratives are embedded within larger discourses of both hegemony and resistance, and are always told within the broader sociohistorical contexts of their narrators (Presser and Sandberg 2015). Attention to this context makes narrative a cultural artifact just as mediated as images and representations of crime and deviance.

Much of the research in narrative criminology has focused on individual identity, particularly that of offenders (Sandberg 2013; Presser 2013, 2009). Here, the stories we tell about our identities are socially sourced. Rather than constantly creating unique and personal identities, we draw from previous cultural knowledge in order to convey information about ourselves (Sandberg 2013; Presser 2004; Wiersma 1988). For example, Presser (2004) discusses how men convicted of violent crimes often construct themselves as “moral selves,” using varying background stories to explain how they were once bad, but are now good. Viewing stories as constitutive of crime can also be useful when looking at stories told about crime committed by others, especially in revealing ideal victims and perpetrators highlighted above. Do attorneys also draw upon pre-authored narratives when constructing their ideal case?

Storytelling is an integral feature of legal practice. Individuals express their understanding of law and legality largely through narrative, specifically via accounts of their experiences with various branches of the legal system (Ewick and Silbey 1998). Prosecutors rely

on police accounts in weighing decisions to bring about criminal charges (Davis 2007). The courtroom itself is a site of drama. Prosecutors and defense attorneys construct stories to argue for or against the occurrence of an alleged criminal event, as well as to make claims about justice as a whole (Offit 2017). The outcome of a trial hinges quite literally upon successfully conveying meaning through crime narratives. The court is an arena for establishing what is considered a “socially acceptable” or “unacceptable” action, and it is where we define what values we uphold and wish to protect, often working to maintain law and order and the status quo (Peelo and Soothill 2000). Given the potential for change that stories carry with them, a close examination of narratives can serve as a unique port of entry into understanding a culture that allows these harms to occur with impunity.

Both green cultural criminology and narrative criminology will be furthered by investigating stories of environmental crime. Narratives are a particularly useful tool for analyzing the problem of environmental crime due to the fact that they can (1) reveal key cultural insights regarding hegemonic power structures from which they are drawn; (2) produce a standard story of environmental crime that is easily recognized at face value; and (3) be used to predict future responses to environmental harm by comparing crimes to the standard story. In acts of storytelling, storytelling, our existing ideas about what constitutes crime are upheld and reproduced or challenged. In other words, stories also do the work of shaping and informing our cultural understandings and definitions of crime.

This project echoes Clandinin and Connelly (1998), who distinguish narrative as a methodological concept for qualitative researchers, with stories serving as the data point for exploring the concept of narrative. In other words, while people “lead storied lives and tell stories of those lives” (1998:155), the role of the researcher is to describe those lives via the

collection and analysis of the story, and the narrative of the experience as a whole (Clandinin and Connelly 1998). Narrative structures the stories we tell, including the broad, cultural frames that invoke collectively understood myths, archetypes, and other symbols that render stories intelligible (Maines 1999; Ewick and Silbey 1998). People come at events with a stock of cultural understandings that help them understand an event. These events are not taken case by case, nor are dialogues taken sentence by sentence. Instead, we have in our heads preauthored narratives that we use to fill expectations (Bruner 1990).

No known study thus far has examined *stories* of environmental harm empirically, as this project sets out to do. Korsell (2001:133) wrote about certain images of environmental crime which are most likely to be characterized as criminal, stating, “There are, of course, environmental offences that affect us deeply. Seabirds dying as a consequence of oil spills, seals suffering because of environmental disruption, barrels of toxic waste being dug up on old industrial sites or the discharge of carcinogenic substances outside nurseries; incidents of this kind will all give rise to headlines, create waves of public opinion and lead to political maneuvering. Such incidents provide environmental crime with a face and with much more visible victims than is usually the case.” Giving a face to the issue of environmental crime serves as a way to rally people behind important social causes by rendering them personal and relateable (Veldman 2012; Weiss and Colyer 2010; Best 1999). A similar analysis was provided by Brickey (1996:488), who writes:

Nighttime burial of leaking drums of hazardous waste, clandestine spraying of PCBs along roadsides, dumping asbestos-tainted material in the woods, and discharging toxic waste directly into a municipal sewer or river are prototypical environmental crimes.

They are deliberate acts that poison the land, contaminate public water supplies, threaten public health, and often cause irreversible environmental harm. They are the product of deliberate decisions to violate the law and may occur over long periods of time.

In recounting these examples, Brickey is making the claim that these examples of environmental harm are most likely to be viewed as criminal, with little dispute. These are the most straightforward examples of actions where it is appropriate for environmental law and criminal law to converge. In interviewing attorneys, I wondered whether such stories would be retold in ideal accounts of environmental crime.

Chapter Summary

Traditional criminological theories tend to study crimes that are direct, physical acts committed by one or a few offenders against one or a few victims. In this regard, they begin with what states deem criminal. Explanations for criminal behavior often focus on the supposed traits or experiences of individuals. Some such theories, such as learning theories, provide insights into environmental harm, but they fall short of explaining larger questions, such as how harm is made part of business as usual, facilitated by state-corporate collaboration and a disempowered public. Nor do they take account of the fact that many environmental harms are not “criminal” at all.

Traditional criminological theories have largely neglected harms against the environment. This is, in part, because laws in the U.S. criminalizing environmental harm are relatively new. Traditional criminological theories also focus on providing explanations for individual behavior, with an emphasis on psychology or the environment in which an individual is raised, neglecting

harms which result from collective behavior. A recent proliferation of critical criminological theories has attempted to account for what traditional criminologists have overlooked, an important task given the fact that collective harms against the environment pose larger dangers to us than traditional street crimes.

Green cultural criminology seeks to understand how environmental crime gets produced in and accepted by a culture, particularly contemporary Western culture. This project pairs green cultural criminology with narrative criminology because it takes careful note of the power of stories to impact human behavior. Stories we tell about crime not only teach us what crime is, but they tell us what actions fall into crime categories and guide how we should feel about harmful criminal behavior. If ecological degradation falls outside of a culturally understood definition of crime, environmental harm will continue and redress will be difficult.

By adopting a green cultural criminological lens, this study begins with the foundational assumption that environmental crimes are culturally constructed. It is not enough to have criminal statutes of environmental law; someone has to enforce them, and that enforcement is not necessarily dependent on whether the law has been violated (White 2010). What factors, then, may shape what enforcement looks like? In order to answer this question, I have decided to focus on attorney stories of environmental harm. Attorneys have direct roles in constructing narratives of harm in courtroom and other legal settings. Therefore, lawyers play a direct role in what environmental harms get recognized as crimes. Because of this, it is important to understand how they construct environmental harm, as it may reveal what actions get left out of such definitions.

This study privileges narrative as a main venue for the cultural production of environmental harms and crimes. The emergent field of narrative criminology is devoted to

understanding how various subject positions and phenomena in the world get constructed through the telling of stories, with the result being harm. Thus, my research goal was narrative criminological – to understand the stories of environmental harm that attorneys tell, which shape their actions relative to harm. The next chapter describes my methodology, how I obtained attorney stories, and subsequently how I analyzed them.

CHAPTER 3

“SPEAKING OF ENVIRONMENTAL PROJECTS”: COLLECTING STORIES OF ENVIRONMENTAL HARM

On an unseasonably warm February afternoon, I stood in the corner conference room of a downtown Southern law firm, taking in the view of the city with Martin⁵, an attorney of environmental law. He was pointing out some of the major visible sites along the nearby river. The weather was already drawing small crowds to the bars and restaurants below, where music and laughter filtered out into the streets. “Speaking of environmental projects,” he said, trailing off as he gestured to the river. Martin explained that this space had once been an industrial brownfield, with a river so polluted no one would go near it. It had since been cleaned up and redeveloped, and steel from the old shipyard had been used to make a sculpture in homage to the area’s past.

This project is about *speaking of environmental projects*. I am interested in the stories attorneys tell about alleged environmental harm. As discussed in Chapter 2, narratives help us to make sense of our experiences by organizing them into a coherent reality. This is no less true of harm than any other experience. Bruner (1990) argues that we make sense of deviations from expected behavior or norms through narrative, a way of reordering the disruption caused by the deviation. Some storied explanations, when repeated and widely circulated by media, public officials, and other experts, can become so common that they transform into taken for granted assumptions about the way social life is organized, regardless of the truth of the narrative. In

⁵ Martin is a pseudonym, as are all names of respondents included in this dissertation.

turn, widely shared stories shape our expectations for what the world and what we do in it, including unfavorable actions such as “crime,” ought to look like (Colyer and Weiss 2017; Lowney and Best 1995). Notions of innocence, chaste living and respectability, by dint of race, citizenship, and other factors, shape “sympathy-worthiness” in the public mind as in the law concerning both victims and offenders (Loseke 2003). In other words, our understanding of and reaction to crime events depends on the story of the crime as we have been told. We may begin to understand a culture which allows for environmental harm to occur with impunity by investigating how stories of environmental crime, and where assignments of guilt, innocence, and blame lie.

I have narrowed the focus of my analysis to attorneys with experience in environmental law. Attorneys selectively construct and reconstruct stories depending on their audience, be it a judge, jury, or the general public (see, for example, Offit 2017; Holland 2009; Davis 2007). Past research on attorney use of narrative has focused on courtroom constructions of conventional or street crimes, such as drug possession and sale, assault, rape, and murder. We have yet to uncover how attorneys construct stories of environmental crime. Courtroom narratives are deployed strategically in order to persuade judges and juries of guilt or innocence; does there exist a set of prototypical stories of environmental crime, shared among those lawyers who engage with environmental law in their practice?

The assumption that constructions of environmental crime are communicated in large part via storytelling is foundational to both my theory and method. The first task of this chapter is to discuss the methodological value of narrative in qualitative research. I then turn my attention to discussing the recruitment and interview process, as well as some pitfalls I experienced during the data collection process, primarily in regards to recruitment and cross-

discipline language barriers. I then describe my analytic procedure of narrative analysis in detail, including the process of identifying stories in text.

Qualitative Research and Narrative Inquiry

Qualitative researchers generally critique the positivist methods that dominated the social sciences until roughly the 1980s. So said Lincoln and Denzin (2003) 15 years ago: “This is a period of ferment and explosion, a time when classics are reexamined and new issues come to the fore. This is a historical moment defined by break from the past, a focus on previously silenced voices, a turn to performance texts, and a concern with moral discourse, with critical conversations about how qualitative inquiry can contribute to contemporary discourses concerning democracy, race, gender, class, nation, freedom, and community” (1048). Today’s qualitative scholarship, with a marked influence from feminist theory and activists’ insights, are posing critical questions about who is given the authority to speak, the role of the researcher in research settings, and the role of the researcher in shaping the knowledge that is collected. “Normal science does not seem so ‘normal’ anymore – nor is it likely to seem so ever again” (Lincoln and Denzin 2003:4).

Narrative inquiry is one form of qualitative research that draws from postmodern and constructionist strands of thought (Clandinin and Huber 2010; Lincoln and Denizen 2003). “Narrative inquiry, the study of experience as story, then, is first and foremost a way of thinking about experience.. To use narrative inquiry methodology is to adopt a particular view of experience as phenomenon under study” (Connelly and Clandinin 2006:375). Here, the phenomenon is a story, which acts as “a portal through which a person enters the world and by

which their experience of the world is interpreted and made personally meaningful” (Connelly and Clandinin 2006:375). Once shunned in research for being too subjective, narratives are now widely lauded for illuminating how humans (re)create and uphold cultural meanings (Loseke 2007; Ewick and Silbey 1998).

I began my investigation into the stories attorneys tell about environmental crime from the fundamental assumption that stories are capable both of organizing knowledge and experiences, and also of influencing the behavior, thus making them important artifacts for criminologists to study. That stories do work in our social worlds is an assumption that spurred the narrative turn in criminology, following disciplines such anthropology, history, literature, and psychology (Presser 2016). Because narrative plays a role both in my methodology and my method, it is important at this point to distinguish between these two concepts.

Clandinin and Huber (2010) encourage researchers adopting narrative inquiry as a research methodology to justify their work in three distinct ways: personal, practical, and social. In contrast to positivist science, which often neglects the role of the researcher in co-constructing knowledge, such justifications serve to increase transparency in research as well as to be honest about what knowledge is being produced. Personal justifications for research projects adopting this approach contextualize the research in the life of the researcher, including their own experiences and questions they wish to ask of the research (Clandinin and Huber 2010:438).

Practical justifications for narrative inquiry refer to considering the ways in which one’s research may shift practice in the field (Clandinin and Huber 2010:438). Social constructionist research, specifically in sub-field of social problems research, has revealed that constructions of social problems depend upon the deployment of successful narratives (Best 1999; Greer 2007; Offit 2017; Veldman 2012). Far from a static, objective social environment, everyday life is “a

reality interpreted by men and subjectively meaningful to them as a coherent world” (Berger and Luckmann 1966:19). In other words, we produce our own social worlds through our daily interactions with and interpretations of what we encounter. Patterned actions give rise to common sense knowledge and assumptions about how the world ought to work. These assumptions, which need not necessarily represent factual reality, can exist at the individual and collective level. Widely shared assumptions, or typifications, are standardized interpretations of phenomena that have the ability to influence future behaviors and beliefs (Colyer and Weiss 2017; Best 1999; Berger and Luckmann 1966). For example, we may switch our manner of speaking between friends, family, or authority figures. Typifications provide us with repertoires for quickly interpreting social situations, thus determining how best to behave. Sometimes short-lived, and others become institutionalized, supported by experts and interests groups that lend legitimacy to their existence (Polletta et al 2011; Lowney and Best 1995).

I take narrative to be a particular type of typification which constitutes our daily experiences. Particularly in social problems research, stories have been important points of research interest for their role in making social issues salient to the public. Social issues are often complex and multifaceted, involving a plethora of actors who enable or impede the problem from multiple angles. Stories can reduce the nuance of such issues and give a human face to the problem, and “provide the rhetorical detail, symbols, and imagery to capture public imagination and typify a particular problem” (Weiss and Colyer 2010:353). By helping us to make sense of what we see in the social world, stories inform our expectations for future action. Of interest to the research at hand is the fact that when we accept certain patterned crime narratives as representative of the social reality of crime, whether such narratives truly reflect that reality, the

story influences future definitions of which actions are criminal and which are not⁶. The ability of narratives to shape our understandings of and expectations for crime, which in turn influence our reactions and actions, makes the construction of stories regarding environmental crime a critical focus of study for this project.

Storytelling is a major activity within legal arenas. Arrests are made and warrants served based on someone's story – or often several stories – of an alleged wrongdoing. Prosecutors and defense attorneys selectively compile evidence, solicit witnesses and experts, and deliver powerful opening and closing testimonies designed to relay a story about an alleged crime (Davis 2007). The *truth* of the crime story that attorneys are tasked with creating is to large extent irrelevant; regardless of whether a crime had actually taken place, or whether the defendant was the actual perpetrator, the success of their story depends on convincing a jury of both (Presser and Sandberg 2015). Prosecutors often construct their stories, like opening and closing narratives, with jurors in mind. Not only do they do this anticipating juror reactions to the facts of a case, but also to juror perceptions of the prosecutor and prosecution itself (Offit 2017). Because legal outcomes, and trust in the justice process, hinge quite literally on conveying meaning successfully through crime narratives, and because of the potential for change that stories carry with them, both in their power for explaining criminal action but also shaping future expectations for what crime looks like, a close examination of narratives can serve as a unique point of entry into understanding a culture that has allowed environmental harm to occur with

⁶ Best (2007), Cohen (1972), Colyer and Weiss (2017), Goode (2008), Lowney and Best (1995) and Weiss and Colyer (2010) are examples of strategic storytelling in the social problems literature.

impunity. A practical reason for researching stories of environmental crime is that it may reveal new ways of speaking/signifying environmental harm.

Finally, researchers should also provide a social justification for their work: that is, they should derive its broader implications (Clandinin and Huber 2010:438). Why should others care about the work? We currently inhabit a culture that perpetuates unfettered environmental harms. The lack of meaningful solutions to some of the gravest environmental dangers we face results, in part, because we do not construct these issues as particularly immediate, dire, or even harmful. Uncovering collective identities and characterizations of victims and perpetrators is the first step in revealing the logics which undergird the assumption that environmental harm is not a pressing issue.

Despite the ubiquity of stories and storytelling in the legal realm, determining that some utterance is a story or narrative for the purposes of research can be difficult. The classic so-called Labovian model (e.g., Labov and Waletzky 1967) defines narrative as a series of statements, temporally ordered, that convey and assign meaning to an event or series of events. The narrative includes orientation, a complicating action, an evaluation of the action, a resolution, and a coda. Orientation clauses seek to situate the story for the listener with respect to the characters, time, and place of a narrative. This context is often followed by some form of complicating action or actions which make up the bulk of the story, telling the listener what happened. The evaluation provides the listener with some stance on the events of the story. The resolution states what happened as a result of the complicating actions. Sometimes a coda is used in order to connect the story to the present moment of its telling. Much narrative scholarship in the social sciences can be traced to this model, expounding so-called “full-fledged stories” (Bamberg and

Georgakopoulou 2008:381) that have been elicited by researcher prompting in interviews or other research settings (Clandinin and Huber 2010).

Unlike in a novel or film, stories as they are relayed in everyday talk commonly lack clear delineations of beginnings and endings. People may start a story which they never finish, presupposing that the listener will fill in the blanks themselves. While the Labovian model is a useful starting point for recognizing stories in text, not all of the stories attorneys told me fit this definition exactly. Several narrative scholars have recognized that in everyday talk, stories do not always take such a structured form (Bamberg and Georgakopoulou 2008; Ochs and Capps 2001). However atypical from the standard Labovian model, narrative remains a useful tool for interpreting and ordering one's social reality. For this project, I have chosen to focus on small stories (Bamberg and Georgakopoulou 2008), tropes (Sandberg 2016) and metaphors (Lakoff and Johnson 2008) in analyzing my data. Small stories represent narrative in the everyday, as they tend to be shared in actual conversation.

Presser and Sandberg (2015:86) identify five foci for narrative analysis in criminological research: "(1) elements or parts of narrative, (2) subject and verb choices that represent agency, (3) genres or types of narrative, (4) narrative coherence and plurivocality, and (5) the storytelling context." A combination of the first and fourth foci are most relevant to the task at hand. By analyzing the elements or parts of a narrative, I was able to ascertain how attorneys constructed a harmful event, including the actors within that event as well as the harmful act itself. As I discuss later on, this revealed that stories do not often include information about potential victims, and rarer still include an emphasis on harm done. They emphasize instead that transgressions of environmental law are technical and complicated, and the harmdoer is not very bad. I also sought out the use of metaphor through this analysis to understand how this was constructed. In

addition, I looked for narrative plurivocality to see whether there were patterned, preauthored constructions of what makes a victim and what makes a perpetrator. Standard stories typically uphold the status quo by reflecting hegemonic conceptions of truth and justice (Ewick and Silbey 1998).

Identity is central to narrative and thus to narrative research (Connelly and Clandinin 2006). Narrative identity, according to Frank (2010:666), is more than just a quality of the self, but how individuals locate themselves with respect to others. Loseke (2007:661-662) identifies four levels of identity that narratives regularly produce: cultural, institutional, organizational, and personal. I am concerned primarily with cultural identities, or the way we delineate various types of actors within stories (DiMaggio 1997; Lamont and Virag 2002; Loseke 2007). For example, in the widely shared story of date rape drugs, victims are often cast as innocent, young women who have been taken advantage of by predatory men (Weiss and Colyer 2010). Institutional identities, similarly, provide us with idealizations of targets of policy and law, legitimizing an institutional arrangement that either promotes freedom or constraint (Loseke 2007; Schneider and Ingram 1993; Alexander 1992). As another example, stop-and-frisk policy in New York, which disproportionately targeted young men of color, was justified using imagery of gang members bringing drugs and illegal firearms into neighborhoods (Goel et al. 2016).

The first story under investigation, the retelling of an alleged or actual environmental crime by an attorney, typically takes the form of an account. According to Scott and Lyman (1968:46), an account is “a statement made by a social actor to explain unanticipated or untoward behavior – whether that behavior is his own or that of others, and whether the proximate cause for the statement arises from the actor himself or from someone else.” The explanatory success of an account depends on perceived legitimacy or focal concerns of the

story; these perceptions shift based on who is doing the telling, and who is listening (Steffensmeier et al. 1998; Scott and Lyman 1968). Relating to Presser and Sandberg's (2015) first focus of narrative analysis, this project further breaks down accounts into three thematic foci for analysis: doers (actors responsible for the alleged harm), victims (actors who suffer the harm of the action), and actions (the type of harm relayed). By honing in on the elements or substance of a story (Gubrium and Holstein 2009), this project is able to make comparisons between the experiences of various attorneys and that of the larger social world.

As discussed in the introduction, definitions of guilt or innocence are often shaped by cultural stereotypes of criminality, even in the supposedly neutral and unbiased courtroom. Thus, categories of doers, victims, and actions are not predetermined by any legal statute or objective reality. Rather, they are negotiated and defined along extant lines of privilege. That we draw upon a limited array or repertoire of knowledge in order to communicate or relate to a given narrative gives way to the second type of story that interests me – the formula story (Loseke 2013) or standard story (Polletta et al. 2011). The formula or standard story is an institutionalized, cultural narrative that is power-upholding, reflecting the hierarchical nature of our society. Elements of these stories influence both our thoughts and feelings in a persuasive manner (Loseke 2013). By investigating respondents' categorization of doer, victim and action, I hope to establish a global coherence between my respondents, relating elements of attorney stories to a broader cultural context and incorporating Presser and Sandberg's (2015) fourth focus of narrative analysis (Agar and Hobbs 1982). In other words, I hope to use the local, direct stories of attorneys communicated through everyday talk in order to draw out the existence of standard environmental crime stories. In the following sections, I describe in detail my data collection and analysis processes.

Data Collection

Narrative inquiry begins with soliciting a story (Clandinin and Huber 2010). Storytelling is an integral feature of legal practice. In arguing their particular case, both prosecutors and defense attorneys construct stories to argue for or against the occurrence of an alleged criminal event, and make claims about justice as a whole (Offit 2017). Prosecutors play a direct role in deciding which cases get charged criminally. I chose to interview attorneys with experience in environmental law generally, and not just prosecutors, insofar as attorney narratives shape alternative legal outcomes.

An online search was conducted for initial recruits, beginning with attorneys in the state of Tennessee, a strategy I undertook initially so that I may be able to travel to conduct interviews in person, should the interviewee be more comfortable speaking face-to-face. I also reached out to the state Attorney General office for all fifty states, as well as several environmental nonprofits. A standard recruitment email was sent to a total of 220 attorneys with experience with environmental law in some capacity. These initial recruitment e-mails yielded a total of 13 participants for the study as a whole, and snowball sampling yielded 1 additional participant for a total of N=14 respondents. My final sample included twelve men and two women. All interviewees had law degrees, although not all had direct experience with litigation; three worked as environmental legal consultants, one was a current prosecutor, one was a law professor, and nine were defense attorneys, although two defense attorneys had worked as prosecutors in the past and one had once been a judge. For complete information on the interviewees and their professional positions, see Appendix C. Interviews were (like the study generally) meant to be probing and exploratory, and to reveal themes which could be incorporated into future research endeavors. Additionally, because environmental crimes are so seldom prosecuted, the number of

attorneys with experience working on such trials is quite low, and as such I needed to broaden the potential pool of interviewees so as to collect sufficient data for this project. These interviews are the first step in a larger research goal of determining whether idealizations of environmental crime affect or predict the responses of legal actors.

All interviewees were presented with an informed consent document that detailed the study purpose, including risks (e.g., potential emotional discomfort from talking about particularly controversial cases, or violations of attorney/client privilege) and benefits (e.g., gaining a greater insight as to the way that cultural ideas of victims and perpetrators impact legal decisions) of participating in the study. To minimize the risks, I reminded respondents that they could avoid providing names or specific company details, and that their participation was confidential and voluntary. I told them that pseudonyms would be assigned to all respondents when used in analysis and reporting. Only the informed consent document contains participant names, and these are stored in a locked box on campus at the University of Tennessee, to which only myself and Dr. Lois Presser have access.

Once a potential respondent had responded expressing interest in participating in the study, I offered the option between scheduling a phone interview or an in person interview, if the attorney was within driving distance of Knoxville. For phone interviews, I responded to emails with a copy of the study's approved informed consent document and requested that the attorney review the document (see Appendix B). I offered to review the document before the interview, and stated that if they had any questions, they should reach out to me or my advisor, Dr. Lois Presser. If they accepted the document and still wanted to participate, I requested that they sign the document and return it to me. I then printed the consent form and deleted the email to destroy

electronic records of the document. If I conducted an in-person interview, I waited until the interview to review the consent form.

Primary data were collected via semi-structured interviews with attorneys from offices such as law firms and nonprofit organizations dedicated to environmental law compliance. Interviews were conducted over a period of four months between February and May 2018. Interviews lasted an average of 41 minutes each. The interview protocol I followed began with four primary open-ended questions (see Appendix A for full interview guide). Semi-structured interviews leave room for interviewees to tell their stories (Ochs and Capps 2001) and for me to discover various interpretations and explanations (Presser 2004). Participants were advised not to disclose any identifying information (e.g., the names of specific companies or individuals), and were told that pseudonyms would be used. Once interviews were complete, I debriefed with my respondents by asking if there was anything else they would like to add or any questions they had for me. I also offered to send transcripts to respondents so that they might look them over, and offered to send a final copy of the dissertation to them.

Interviews were recorded using both a digital audio recorder and a cell phone in case of battery loss for one recording device, though only one audio file was stored for data. Primarily, I was concerned with asking respondents about what an ideal case of alleged environmental harm looks like. Presser and Sandberg (2015) note that the questions one asks will circumscribe the type of analysis one can do. Because I am interested in a standard story, I chose to ask about “ideal cases.” I also asked generally about attorney perceptions of the differences between criminal, civil, and administrative responses to environmental law violations, and which they believed was most appropriate to utilize. Additionally, I questioned whether or not respondents believed that overall environmental quality has gotten better over time since the development of

criminal environmental laws, and whether or not we have experienced a shift in offenses since the early days of criminal environmental enforcement.

Analytic Procedure

I transcribed interview recordings verbatim, and anonymized them to remove all identifiable information regarding participants and the cases they alluded to. Once I had finished transcribing, I uploaded the transcripts to NVivo, a qualitative data analysis program designed for those researchers interested in analyzing text. NVivo allows users to code parent nodes, or main themes, and then create any number of subthemes within those parent themes. On my first pass through the data, I coded for full-fledged Labovian stories. Such coding involved searching for the term “story,” as several attorneys had made reference to stories in their responses to my questions, for example, beginning a response with, “Let me tell you a story.” I also coded for any experiences with cases to which attorneys made reference. This effort did not yield many full-fledged stories, however. Attorneys alluded to elements of stories such as act, character, and evaluation, more than they enunciated them.

Contemporary narrative scholars have acknowledged that the story structure outlined by Labov, while useful, may be too restrictive for identifying stories in everyday talk (Bamberg and Georgakopolous 2008; Ochs and Capps 2001). Stories are also told by way of *trope* (Sandberg 2016) and *small stories* (Bamberg and Georgakopolous 2008). Tropes and small stories refer to bits of narrative that may begin but not end, or which reveal only parts of what happened. The unspoken or omitted sections of narrative necessitate that the listener often fills in the details with their own assumptions. Because they are often not complete in their details, small stories

are often packed with presupposition, which assumes the reader knows the details about which the narrator is describing or discussing (Machin and Mayr 2012). I decided to revisit my data with a focus on small stories.

When I coded for small stories, I coded for any reference to either a victim or offender of environmental harm, or characters in potential stories. I also coded for any time an attorney discussed a harm against the environment. Exploratory examination of the transcripts for these elements revealed seven primary nodes: characterizations of actors, distinctions between criminal and non-criminal acts, low-hanging fruit cases, remedial efforts, a shift over time in characterizations of environmental harm, the state as an agent of harm, and agentless environmental harm. From these original codes, three main nodes of interest stuck out to me, which became my final parent nodes: low-hanging fruit cases, the state as an agent of harm, and agentless environmental harm.

Using the present interview guide, theoretical saturation was reached, in my estimation, at fourteen interviews. *Saturation*, a concept coined by Glaser and Strauss (1967), refers to the point at which no new insights are being gained from the data being collected. I entered the interview scene with a deductive orientation, wondering whether idealizations concerning crime apply in the environmental harm context as they clearly do in the conventional crime context. I used the Labovian narrative model as the instrument for gleaning stories, and found idealizations concerning past cases that were captured in low-hanging fruit stories, discussed in chapter 4. Indeed, all fourteen interviewees gave some account of low-hanging fruit cases, and as such I determined that I had reached saturation in answering this question. It was time to ask a more inductive question: how do legal actors tell of contemporary environmental harms altogether?

I revisited the data and recoded with the elements of low-hanging fruit cases, the state as an agent of harm, and the collectivization of environmental harm in mind. Repeated passes through the data allowed me to construct more precise articulations of each node and to add subcategories which may not have emerged upon initial coding. Once coding was complete, I began to piece together the small stories I had collected into larger narratives. According to (Clandinin and Connelly 1998), the goal of the researcher is to collect stories into a larger narrative of experience. The larger narrative posits egregious cases of harm (“low-hanging fruit”) having been dealt with in the past, such that the regulatory state is now overbearing: today’s environmental harm is everyone’s – and therefore no one’s – fault.

Chapter Summary

Narrative inquiry is a methodological approach to qualitative research which privileges the fact that we lead storied lives. The goal of the researcher, through analyzing stories told by interview respondents or those in the field, is to tease out themes that build up to a narrative experience. As such, this project seeks, through the collection of attorney stories of environmental crime, to tease out the narrative experience of environmental harm. Stories will allow me to understand how attorneys construct actions which violate environmental law, the offenders who do the lawbreaking, and the victims who are harmed as a result.

Narrative criminology, which may be considered a descendent of cultural criminology, provides focus for my analysis by allowing me to focus on stories as cultural conduits for knowledge about environmental harm. Narratives help bring coherence to our lives by ordering past experiences and providing parameters and expectations for new experiences. As such, I

constructed my interview guide with the intention of eliciting stories of environmental crime from my respondents. My conversations with fourteen attorneys with experience in environmental law yielded three major story forms, which I label low-hanging fruit, the state as an agent of harm, and agentless environmental harm. The following chapters will explore each of these stories in detail.

CHAPTER 4

LOW-HANGING FRUIT: PROTOTYPICAL ENVIRONMENTAL CRIME STORIES

I began data collection for this project intent on investigating how attorneys told stories of environmental crime. This task turned out to be harder than I originally planned. Often, my question about ideal cases gave the attorneys I interviewed pause. Such was the case with Michael, who specialized in compliance counsel at a boutique law firm in the southwest. As someone whose career involved making sure companies operated within regulation, particularly with regard to air emissions, Michael and I had spent the majority of the conversation discussing how mediation, rather than civil or criminal regulatory enforcement, was his preferred method to resolving alleged violations of environmental law. Near the end of our conversation, Michael politely asked if he could offer a methodological critique of my current interview guide: ditch the question which asked whether an ideal case of environmental crime exists. He expressed doubt that I could obtain useful data from this question, as it was too broad and responses would vary too much based on the experiences of those with whom I was speaking with. A bit clumsily, I began to explain my rationale for including the question in the guide by explaining my research background in studying sexual assault, when Michael interrupted me: “And see, we would all probably agree that that’s criminal!” he said, laughing. He maintained he did not think the same could be said of environmental crimes.

In some sense, Michael was articulating a cultural truism: few would disagree with the idea that sexual assault is a crime. Reality, however, is more nuanced than this statement. Crimes like sexual assault have been mythologized in our culture. There exist a standard set of stories which both describe and explain sexual violence, for example that of the chaste victim of

surreptitious drink spiking by a stranger (Weiss and Colyer 2010). These culturally shared stories neglect the reality of sexual violence, where one is more likely to be assaulted in a familiar place by a known acquaintance, intimate partner, or family member. As rape myths are shared and reshared, they not only explain why crime happens, but also inform our reactions to allegations of wrongdoing and expectations for future behavior. And when survivors share stories that do not fit the mythologized picture of sexual assault, they are often met with disbelief or questions pertaining to their own behavior. Negative social reactions to disclosing a sexual assault are correlated with survivor self-blame and post traumatic stress disorder (PTSD) symptoms (Ullman et al. 2007).

The existence of ideal archetypes and culturally understood stories was one inspiration for this project. Beyond myths concerned with sexual violence, archetypical stories prevail and circulate in common knowledge of the dope fiend (Heith and Copes 2008), the criminal immigrant bringing drugs and gang violence across the Southern border into the United States (Rumbaut 2008), and the myth that the typical criminal is a young male of color (Robinson 2000; Steffensmeier et al. 1998). Law enforcement in seeking out tough on crime policy often plays up the myth that crime is a problem associated with lower classes (Chambliss 1999). I sought to understand whether environmental law attorneys would tell a standard story regarding environmental crime, even as I anticipated that the reality of environmental harm would be more nuanced than such a story could capture. While open to any and all relayed stories, I sought to reveal whether or not there existed a standard story of environmental crime, which I attempted to determine by asking respondents what an ideal case, real or hypothetical, of an alleged environmental crime would look like.

Despite the fact that my question of ideal cases gave many respondents pause, many had similar ideas about what such a case would look like. In my first round of coding, I searched for stories which fit the full Labovian model discussed in Chapter 3, containing an orientation, complicating action, evaluation, resolution, and coda (Labov and Waletzky 1967). The dominant Labovian story told was the story of *low-hanging fruit*. Every one of the fourteen interviewees I spoke with had a low-hanging fruit case they could recall. This chapter outlines three prominent themes featured in low-hanging fruit stories. First, a direct and measurable harm has taken place. Second, the harm is carried out by bad actors who behave negligently or recklessly with respect to existing environmental law. Third, and less crucially, those bad actors have lied about or attempted to conceal their actions. I noticed little variation in these stories; details, such as the type of harm (e.g., lying about air emissions or directly dumping toxic waste into a body of water), were different, but the themes outlined above were consistent across articulations of the story.

Peter, a former prosecutor for the environmental crimes unit at the United States Department of Justice (DOJ), was the first respondent to introduce me to low-hanging fruit cases of environmental crime. I met Peter in a crowded café one morning in February of 2018, where we spoke over coffee about his current job in private practice, working as a corporate defense attorney. When I asked about what he thought an ideal case of environmental crime was, he began speaking about his experience at the DOJ, back when he had very little experience with environmental law as a whole. “I didn’t know one statute from another at that point,” Peter said, smiling across the table. “And you know, broadly, Clean Water Act, Clean Air Act, didn’t know how they worked or anything.” When he applied for the job at the DOJ, the interviewer had asked him if he knew how to indict people, to which Peter responded that he did. “He said,

you're hired," Peter said with a laugh. He then told me the following story:

Peter: So, I'll tell you what we were looking at, at that point. And it was what you would call low-hanging fruit. There were an awful lot of people that were just flagrantly disregarding various environmental laws. Um, I remember one that our section prosecuted, a friend of mine was the primary attorney on it in New Hampshire, a leather company, leather companies classically produce a lot of hazardous waste from the tanning operation, okay. Um, they had constructed one line that appeared to go to a treatment plant, and another line that bypassed it and went straight into the river. They concealed the bypass line. Um, and they were convicted and um, my recollection is some people went to jail.... So that's one kind of your classic, you deliberately do something and conceal it so that you avoid detection.

This story of the tannery told by Peter is a prototypical low-hanging fruit case that would be recounted by each of my interview respondents. In Labovian fashion, it begins with orienting the listener that this was back in the early days of federal criminal environmental enforcement. The complicating action is the illegal discharge of wastewater into the river, and the attempt to conceal said discharge. Peter's evaluation is that this was a classic case. Overall, the tale has three major elements, which I will expand upon below: the first is a direct harm to the environment, the second is a bad actor, or an individual (or small group of individuals) who acted with intent, and the third is a lying or misrepresentation of one's actions.

Direct Harm to the Environment

Low-hanging fruit cases often centered around a complicating action, which was some form of direct harm to the environment, with the most commonly given example of such a harm being directly dumping a waste product into a body of water. In Peter's story, the tannery constructed a hidden pipeline that would dump wastewater directly into the river, as opposed to paying for the water to go to a treatment center to be cleaned. The presence of a direct, observable harm that violated existing environmental statutes was an important element of the environmental crime story. In part, the direct and observable harm of directly dumping a waste product into a body of water was important because in order to charge someone criminally, prosecutors still need to meet the elements of the crime according to legal standards. As such, prosecutors have to prove injury-in-fact, or in other words that a harm did take place, in order to even consider bringing about criminal charges.

Low-hanging fruit stories often focused on naming a harm against the environment. That is, the harm of dumping tannery wastewater into a river without treatment is central to Peter's story. In these cases, naming the harm is important because it implies that there is a solution that can stop the harm. In Peter's case, the offenders were fined and went to jail, and the listener of the story can presume that the pipe needed to be deconstructed. The deconstruction of the pipe and jailing of the perpetrators bring a sense of finality to this story. A harm had taken place, and then enforcement agents intervened to put a stop to the use of the illegal pipeline, and subsequently we assume that the harm has been alleviated. An obvious crime, in other words, warrants, and got, an obvious response – legal intervention and punishment.

By focusing on direct harms that can be observed and measured, this story neglects a host of other environmental harms that can and does take place elsewhere, constraining our

expectations for what counts as crime. It does not include air emissions, perhaps because they are often invisible and dissipate quickly, leaving little trace behind. In additional interviews, air emissions only came up twice in reference to the Volkswagen emissions case. Here, however, it was not the emissions themselves that were the focus, but the lying and tampering with regulatory mechanisms that was the harm. I discuss this further at a later point in this chapter. No low-hanging fruit cases mentioned harm to wildlife, such as trafficking animal products or illegal logging. While these examples certainly may be considered criminal by my respondents, the initial and immediate reaction was to give an example of illegal dumping. This is perhaps because there is little room for gray area here: a body of water should not have hazardous waste dumped into it without treatment. This is a black and white example that is relatable to all listeners to make a point.

Another element that prosecutors have to satisfy in order to bring about criminal charges is intent. This feature is generally hard to prove with acts of pollution. Environmental law typically allows for some types of harm to take place. For example, logging is okay, but logging in certain prohibited areas, or cutting down too many trees, is not. It can be difficult to prove whether or not someone intended to log on land it was illegal to do so, or to exceed the limits for where they could cut down trees. Intent is also difficult to prove in small cases, where companies may be doing the best they can with the equipment that they have. Here, it is difficult to say that someone acted with intent to harm the environment if their equipment is old and inefficient, and criminal sanctions may not be necessary to ensure compliance with the law. In this case, however, there was a clear method by which one could treat the wastewater after the tannery had used it. By opting to construct a completely new pipeline to illegally dump into the river, intent to violate the law was present. In the following section, I expand upon a second characteristic of

the standard environmental story which also helps to prove intent: bad actors who act negligently or recklessly in regards to the law.

Bad Actors

In addition to foregrounding direct harm to the environment, low-hanging fruit stories also feature bad actors as their dominant characters. A bad actor is an offender, or small group of offenders, who carry out the harm. In the case of Peter's story, the bad actor is implied as the workers who decided to construct the hidden pipeline or those who actually built the pipeline. Importantly, this is an individual, or small group of individuals, that can be identified directly; rarely were offenders in ideal cases companies or collective organizations. Even in the case of the Volkswagen emissions scandal, respondents pointed to the engineers at fault for developing the code which would bypass regulatory emissions. Individualizing the problem of harm makes solutions salient: they provide a clear definition of who is right, and who is wrong.

Bad actors act recklessly or negligently in their behavior. Characterization is particularly important to crime stories, which position people along lines of culpability. Peter uses the orientation to introduce two characters in the story. First, he makes reference to himself and other prosecutors at the DOJ as actors with an interest in prosecuting offenders. Second, he introduces the offenders themselves, who were typically flagrant violators of environmental law. Here, by using the term "people," Peter individualizes the problem of environmental crime. These were actions committed by individuals, not corporations or other collective organizations. Contrast this to the example case of the leather company that had constructed a pipeline to dump wastewater into a nearby body of water. Here, the blame was assigned to individual members of

the company, not the company as a whole. Another important characteristic of offenders is their intent; here, the workers who constructed and operated the illegal pipeline knew what they were doing was wrong, but violated the law anyway. The company even went so far as to conceal their actions, further proving their intent. In short, the offenders in this story are people who intentionally violate environmental law and directly harm the environment in some way.

Acting recklessly with respect to environmental law clearly informs listeners how they should feel about a perpetrator. In one clear example of this, I spoke with Joseph about a case he worked on involving an act of illegal dumping. Joseph, a corporate defense attorney who has been working in the area of environmental law since 1990, began working at his current boutique law firm about two and a half years ago. While Joseph explained that his daily work usually involves more complicated cases, he told me the following story about a case that his firm was involved with earlier in 2018:

Joseph: We got hired to handle a matter last month where we represented a series of convenience stores that sell gas. Well some moron pulled up behind the store in the middle of the night in a tank of diesel fuel, and dumped it to a creek behind the store. Uh, and I guess he thought because he was doing it at a convenience store, it would get blamed on that convenience store.

Holly: Oh no!

Joseph: Unfortunately for him, they had video cameras recording the entire thing. So, I mean we tracked him down, his company down. He had picked up a load of the wrong material, and he was

scheduled to go pick up another load the next day. And so it was gonna put him behind. And he just pulled up behind the convenience store and I mean pumped several thousand gallons of diesel into a creek bed. You know, it ended up costing half a million dollars to clean it up. They shut down the elementary school for two days. That's criminal. That's easy. Okay. Slam dunk. That guy knew what he was doing. He knew, he had been trained. There's no way he had that job without somebody having told him, look, you can't do it just pour this out on the ground. I mean, you've never been trained, you know that's wrong.

Joseph's story has many elements that are similar to Peter's story of the leather tannery. The complicating action is the act of emptying a truck of waste into a nearby stream. As with Peter's story of the leather tannery, this is a direct, observable harm, one which had in fact been caught on camera, providing solid evidence of who committed the wrongdoing. In Joseph's story, the focus is shared between the harm and the bad actor offender. Joseph's story clearly tells listeners how to feel about this perpetrator, however: this was a bad actor who deserved punishment. By stating, "I mean, you've never been trained, you know that's wrong," Peter is making an appeal that anyone would know that this action was wrong, and therefore could not claim ignorance of the law. As with the direct harm to the environment, making the case that an offender acted deliberately to harm the environment makes it easy to determine fault.

Notably, one major character is absent from this story: the victim. Listeners of the story can infer that the victim may be the river, the plants and animals which live around the river, or

even people who fish and swim in the river, however none of these potential victims are directly mentioned in Peter's story. A common theme in the stories told of ideal cases of environmental crime; often, the stories center around the character of the offender while the victim goes unnamed or unspoken. The absence of a specific victim is a unique element of this type of crime story, where the harm itself is seen as justification enough that a crime has taken place. In other words, we never meet a specific individual, family, or even community that suffers because of what harm takes place by dumping into the river. The victim is implied but never fully described.

Two options are present for lacking a victim as a character in the standard environmental crime story: First, when a victim is absent from a crime story, it does not evoke the same type of emotion that a crime story with a victim does. Compelling crime stories are able to connect with listeners because of the sympathy or empathy that they feel for potential victims. How can one feel sympathy for a victim which does not exist? This may make it easy to discount stories of environmental harm as criminal at all, as we typically associate criminal acts with harming a person. Alternatively, by keeping the victim character ambiguous, it allows listeners to fill in the blanks for who may be harmed. They can determine the extent of harm in their own minds. I suspect that the former option is more meaningful, given that listeners of crime stories tend to have more rigid views on how characters in crime stories should behave (Polletta et al 2013).

In both stories told by Peter and Joseph, a third element of interest to this particular analysis emerged: the attempt to lie or conceal one's actions. In addition to the dumping itself, which was illegal, it is implied that there was an intent to conceal the dumping, as the action happened at night under the cloak of darkness, near a location that Joseph assumed the trucker thought could be blamed for the action. Lying and misrepresentation are a third element of the standard environmental crime story, to which I now turn my attention.

Lying or Misrepresentation

A third and final characteristic of low-hanging fruit stories is the presence of lying or misrepresentation of one's actions. In turn, lying indicates intent to deceive. In the case of the leather tannery told by Peter, the deceit was concealing a pipe. The concealment of the pipe suggested to prosecutors that the tannery knew they were supposed to be treating the wastewater before dumping it into the river, yet chose to take a shortcut instead. This was a common theme. In the following story, Scott talks about what he termed "magic pipes" on cruise ships, which are used to illegally dump human waste without treatment while out at sea.

Scott: Okay this is, this is onboard waste, human waste from the toilets on cruise ships, which they're required to, um, you know, to contain in septic systems and then to only discharge once they reach port and the waste can be treated. And of course there's a long history of defeating this, and dumping this stuff while at sea. And that can be regulated, I think in the US's case at least to the extent of our exclusive economic zone, 200 miles out or whatever the figure is, there are EPA regulations that deal with that or require ships to contain this stuff and bring it in to port. But there's a whole history of dumping it at sea, which is obviously a problem. And the mechanism for that is more mechanical than Volkswagen's, but it's the same idea. They have a perfectly working system on board so that anytime there's an inspection, certainly in port or when they dump stuff in port, the system works the way it's supposed to, and it gets off loaded and into the

treatment systems that are on shore. But when they're at sea, there's a hidden pipe, and all someone has to do is pull a lever and it goes out the, you know, the side of the ship instead and into the ocean.

Much like the stories told above by Peter and Joseph, this tale of magic pipes can be seen as having a Labovian structure. The important focus for Scott is the fact that the cruise ships have built hidden pipes into the very structure of the ship, which signifies that they are trying to conceal their actions. He draws a parallel to the Volkswagen emissions case, a notorious case in which Volkswagen engineers wrote code to override regulatory measures for emissions standards. In each of these cases, not only was there a direct harm resulting to the environment carried out by several bad actors, but there was lying to conceal a harmful action.

Often, when lying characteristics of the story are involved, the emphasis centers around lying, not the harm being done to the environment. When I was talking with Martin, one of the first qualities which would tip a case into criminal prosecution he mentioned to me was lying. He remarked, "You know, I will frequently read a report about something that's been prosecuted, and it's and I look at it and I say, 'Well okay, that was kind of bad, but why did they do this criminally?'," only to reveal that the details of the case revealed that the defendants falsified a report or submitted false measurements. When stories emphasized perpetrators lying, it was the lie that ended up getting companies in trouble, not the initial environmental harm.

Chapter Summary

Bruner (1990:49-50) informs us that “The function of the story is to find an intentional state that mitigates or at least makes comprehensible a deviation from a canonical cultural pattern.” Low-hanging fruit cases, in their straightforward nature, represent the deviation. Low-hanging fruit cases are prototypical stories of environmental crimes. In line with past research on environmental crime, as White (2013) found, the low-hanging fruit stories were the obvious cases. In these stories, one or several individuals commits an intentional, direct harm to the environment, for example by illegally dumping waste material into the ground or water, or by tampering with regulatory equipment. Often times, lying is another key feature of a low-hanging fruit story. Low-hanging fruit stories were the easiest and most straightforward stories that the respondents I spoke with could tell. Each attorney had a low-hanging fruit story they could discuss. The language of low-hanging fruit stories reproduces the conceptualization of environmental crime as direct, physical, and intentional.

In addition, in pondering low-hanging fruit as rhetoric, one notes that the yield – fruit – is a good thing. Nothing about this metaphor points to the immense suffering and devastation that are actually associated with environmental harm. The positivity of the metaphor is an indication of how detached these actors are from suffering and devastation except in those instances where they might use suffering and death to “win” cases.

Low-hanging fruit cases are good for criminal enforcement of environmental law. They satisfy the material elements of the crime, and provide prosecutors with easy cases that they can win in court. They are not necessarily representative of the majority of harms we see today, however, primarily because they lack the nuance to account for the variety of harms that we face. What of emissions that cause harm, but may fall within EPA safety standards? What of cancer

clusters and trends in low birth weight and miscarriage for those living in industry-adjacent communities? Low-hanging fruit stories would seem to imply that criminal environmental law is incapable of responding to such cases.

I think back now to my conversations with my interviewee Michael. He was quick to assume that all the attorneys I interviewed would agree that sexual assault was a crime. At face value, I agree; however, research shows that not all cases of sexual violence get recognized as legitimate harms. A similar phenomenon occurred here with environmental crime. While the case of the low-hanging fruit is straightforward and easily recognized, there is more nuance to environmental harms we face today, harms which cannot be reduced to easily digestible stories of individual wrongdoers flagrantly violating environmental law. He said, “There’s no modern equivalent of the Valley of the Drums, or Love Canal.” Perhaps not, but given that statement, what types of environmental harms are happening? The following chapter discusses interview-derived stories emphasizing another type of harm – that which is done by the state in the name of environmental harm redress.

CHAPTER 5

DAVIDS AND GOLIATHS: THE STATE AS AN AGENT OF HARM

Low-hanging fruit tales tell of an individual or several individuals who negligently and recklessly commit some type of direct harm, such as illegally dumping into a body of water or tampering with regulatory equipment. Often, lying or misrepresentation of action is a part of these stories. Each attorney could agree that these were harmful cases that should be prosecuted criminally. However, even as these stories appeared salient in the minds of my respondents, the overall consensus was that these cases are exceedingly rare today, seen mostly prior to and most recently in the 1980s, when environmental criminal law were first implemented. I then had a new question to ask: if participants believed low-hanging fruit cases were no longer taking place, or that they did not necessarily constitute the majority of environmental harms we face today, what kind of environmental harm is happening, according to attorneys?

Quite commonly, rather than emphasizing harm to the environment, my respondents highlighted harm perpetuated by the overreaching arm of the state. In other words, many interviewees cast criminal and civil regulatory behavior as harmful in itself. These stories represent a major shift in the type of harm discussed; the major complicating action of low-hanging fruit stories was harm to the environment. Here, harm remains a major plot point, but the harm against the environment is rarely, if at all, mentioned. Instead, stories which depict the state as an agent of harm focus on the harm done to individual people by cumbersome, overbearing regulations and enforcement agencies.

In contrast to research which has shown that enforcement agencies are consistently understaffed and underfunded (Ozymy and Jarrell 2016; Brisman and South 2015; White 2010;

Uhlmann 2009; Akella and Cannon 2004; Rosenbaum 2003; Brickey 1996), some stories relayed to me by the respondents I spoke with make the state out to be a Goliath of unlimited time and resources. Corporations – and their attorneys – become Davids, trying to do the best they can to overcome the enforcement giant. Stories which characterized the state as an agent of harm were characterized by interviewee use of metaphors of violence to describe what Goliaths did and can do to Davids. While I detected no distinctions in *who* told stories of the state as an agent of harm by group (for example, prosecutors were not completely aligned with the state, while defense attorneys were not aligned completely against the state), some small variations of the story were apparent. In particular, this sort of characterization was accomplished via two discernible plotlines: the punishment was greater than the crime (such as in the stories recounted below by Michael and Jason), and the court of public opinion had undue influence (as in the stories told by Martin, Jason, and Brian).

The Punishment is Greater than The Crime

Small stories that cast the state as an agent of harm often characterized enforcement efforts as disproportionately harsh compared to the harmful act which had been completed. Here, prosecutors and other enforcement agents were cast as frivolous and unpredictable. When interviewing Michael, one of the points he stressed was how sweeping environmental laws are.

Michael: Yeah and the other great [example] is that if you're, you know, taking a drink out of your little bottle of water on a hike, and you dribbled into a creek, that's a discharge prohibited as a felony violation under Section 311 of the Clean Water Act.

Holly: No way!

Michael: Absolutely. It is the addition of a pollutant from a point source into a water of the United states, which is the per se definition of a felony violation.

Holly: Well I will not admit whether I have or have not done that in this conversation.

Michael: Nor should you. And so people, I don't think people understand the reach of environmental law, and what it criminalizes.

The crime Michael refers to is almost absurd; most individuals can easily imagine being out for a hike and accidentally spilling some of their water into a nearby creek. Because the action is so mundane, it seems ludicrous for the state to categorize it as a felony.

The effects of felony violations for environmental statutes were often seen as not matching the harm that had occurred. Take, for example, this story told by Jason regarding felony convictions:

Jason: I mean, you know, prosecutors are human. Um, despite - you won't hear many defense lawyers say that - but prosecutors are mostly human. And so they're subject to being swayed both ways. Um, if there's uh, you know, half a town lying on the side of the road dead, that should affect their decisions as to whether or not this might need to be prosecuted criminally. On the other hand, if

it's a nonintentional act and Billy Bob's, you know, a young father of three, upstanding citizen, never had a speeding ticket in his whole life, he just screwed up. Well, sometimes you can convince them that maybe we do this from a civil standpoint, and we don't ruin this guy's life. Because rest assured, a felony conviction um, ruins your life. You never vote, you never carry a gun, you never get another job. Fill out a job application and for yuks sometime, just check the box that I've been convicted of a felony, see what happens. No it's a, it ruins your life, in a very real and immediate way.

There is a lot to unpack in this short hypothetical account. The focus is around characterizations of actors, with plot playing a minor role. Jason here contrasts the blatant and direct harmful action of some type of environmental harm killing half of a town with a presumably less harm committed by an individual, Billy Bob. The action here is unnamed; we do not know what harm Billy Bob has committed, just that it can potentially be tried as a felony violation of environmental law. However, what Jason implies is that Billy Bob, a law-abiding family man, does not deserve the label of *felon*. Here, prosecutors are not cast as agents charged with protecting individuals from some type of environmental harm. Rather, they are bestowed with the power to ruin lives, even when the harmful action does not warrant such a charge. As with Michael's example above, there is an imbalance between action and punishment, with the latter being far too harsh.

Michael and Jason's stories illustrate a departure from the standard environmental crime story discussed in the previous chapter. Because the harms are not flagrant, direct, or intentional, the offender is actually the state and its overreach of power. Defense attorneys and their clients are left to attempt to negotiate with the state so as to avoid a conviction which would be extremely detrimental to the clients' lives. In the following section, I describe another scenario in which the state is seen as an agent of harm: when its agents are influenced by public opinion and notoriety of cases.

Influence of the Court of Public Opinion

Many small stories of environmental enforcement agencies made reference to the influence that public opinion may have on the case. The state may not be out of line responding to environmental harm, but rather pushed along toward harsh action. In the following story, Martin asserted that, in part, the criminal charges brought about in the lead poisoning of Flint, Michigan's water pipes resulted not from the harm done, but from public attention on the case:

Martin: If it's in the papers, if the reporters are calling, that can elevate something up higher. It's not that people are shirking their duties in the authorities, it's not that they're gonna get away with not making it criminal if nobody's pulling their chain, but that can have real world effects. Um, a lot of, you know, regulators and government officials, they wanna be seen as doing their jobs, they don't want to get swept into it, they don't want to be embarrassed. Something like Flint, Michigan. There's a case where, there were

some pretty egregious things there, but there were some other things that have been pursued criminally that were kind of standard operating procedures you know? “Okay, I’ve read your report, I’ll give you a six month waiver, get this in shape.” You know, routine, [stamping noise and motion] chk, chk, chk. And now you’re indicted for that. Um, that would not have happened but for the big blow up and the big notoriety and again, aside from the fact that yes, this was serious and people were probably injured.

Broadly, Martin acknowledges that many enforcement agents are doing their job, and want to make sure that they are fulfilling on the duty of enforcing environmental law. Sometimes, however, they may overreach their authority if the public perceives that they are being too lax in enforcement, regardless of the harm that has taken place.

Martin then gives the specific example of Flint, Michigan. The scandal of lead in the water of Flint is one of the most notorious modern environmental disasters. The harm of poisoned water takes a backseat in this story. While Martin acknowledges the harm, he also implies that many of the criminal charges would not have been prosecuted if the case had not garnered so much media attention. This is interesting, because the case of Flint would at face value appear to fit the standard crime story of a direct, measurable, and intentional violation of environmental law. Martin characterizes part of the scandal as “standard operating procedure,” revealing that many contemporary cases of environmental harm are not as straightforward as the low-hanging fruit cases of the past.

State overreach caused by undue influence by public opinion is, according to this plot, enabled by prosecutorial discretion. Jason told another story of the effect of prosecutorial discretion in regards to environmental crime using the trial of Larry Nassar:

Jason: Yeah no I think that notoriety does affect charging decisions....They can pretend they're not a politician, but, look it up in the dictionary. And, and voters are a fickle bunch. So they can say, I won't, I'll never, I'll never review a potential criminal charge based on the politics, uh, I suggest that that...that'd be very difficult to do. And uh, now, federal prosecutors serve at the pleasure of the president. Um, so they only have um, one vote. One voter, okay? And so they're a little more immune to notoriety of the case. But um...you know...that's, that crazy doctor that molested all those girls got what 400 years?

Holly: Oh yeah, Larry Nassar.

Jason: I mean, with all due respect, I don't think he's gonna live 400 years. And um, [laughs] you know, a basic 99-year sentence for a 50-year old guy would have probably done the trick. And uh, but, y'know, he got 400 years for a reason and it wasn't because they thought he was gonna live that long.

Jason begins his story by characterizing prosecutors as politicians, which carries a negative connotation in this light: prosecutors will not observe the facts neutrally and act according to the law. Rather, prosecutors are swayed by those whose votes and/or political support they need.

Jason goes so far as to say that he would be surprised if politics were not involved in every case a prosecutor decided to review. In the specific example of Larry Nassar, a former physician at Michigan State University who had been accused of molesting over 200 young girls. The ultimate sentence he received, Jason implies, was given in order to satisfy public anger over the case. While sometimes this overreach can be seen as justified, it ultimately insinuates that the state possesses a great power to charge individuals criminally not because they have committed a harm worthy of the charges, but because the public demands the charge be brought.

Prosecutorial discretion was often cast as a tool which allowed for the overreach of the state. For example, take this small story told by Brian:

Brian: Depending on the egregiousness of the, either ignoring what it takes to comply or, or willfully, um avoiding compliance, that's where the rubber meets the road. And the difficulty there, with all of these enforcement tools, is what we call prosecutorial discretion. What deserves prosecution and what doesn't. And many times at least it start outs very subjectively. And it could be analogous now with the current debate. Well, is Bob Mueller doing the right thing investigating Trump? Or is it just a political witch hunt? You can come to different conclusions.

Here, the characterization of harm depends not on whether any laws had been violated, or even whether harm had been done at all. Rather, criminal indictments are the result of prosecutorial discretion. The implication here is that when presented with the same facts, different prosecutors may come to different conclusions about whether or not a crime has taken place. This

subjectivity casts the state in a negative light, because there is seemingly no consistent rationale for why some harms may be criminalized and others not. Again, potential defendants and their attorneys are at the whim of the Goliath state, hoping to catch them on a good day where they do not feel like bringing about criminal charges. Peelo and Soothill (2000) find that, based largely on media reports, the public makes decisions concerning who is criminal and who is not. My interviewees connect with that view of the public, with their view that the decision to prosecute is not always based on written law, but is rather a discretionary bending to the will of the people.

Metaphors of Violence

Korsell (2001) use a “big stick/small stick” metaphor in suggesting that enforcement tools should be implemented along a continuum and with a variety of options that increase in severity. In both scenarios where the punishment does not fit the harm committed and the notoriety of the case, the state is implied to be overreaching in terms of its authority. The most direct way in which the state was cast as an agent of harm is through the use of metaphor, particularly metaphors of violence. Enforcement of environmental law was typically described in terms of a series of steps, each more violent than the next. For example, take this explanation of the enforcement process provided by Steve, a corporate defense attorney:

Jason: You know, think of it this way. The first one, regulatory enforcement’s like tapping them on the shoulder, okay? Civil enforcement’s like hitting em behind, you know in the back of the head. Not terribly hard, but enough that their glasses kind of slide

down their nose and like, uh excuse me? Did you not hear me the first time? And then the third rung of the ladder is criminal enforcement, and that's like hitting them in the face with a baseball bat. And so with the tap on the shoulder, a little tap on the head, or taking a baseball bat to em and it's the exact same facts. The release is the same, the damage or not damage is the same, factually all three of those can be identical. Um, but it's up to the regulator slash prosecutorial authority - DOJ, US attorney's office on the feds level or the local district attorney in the attorney general's office on the state level - it's up to them to decide... saying, okay does this does this does this person, does this entity, do they need the tap on the shoulder, the bop in the back of the head, or do we need to take the bat to em?

This story is packed with metaphors of violence. Yet, at each point of enforcement, the violence that is environmental harm goes unmentioned. Instead, the focus is on what harm the prosecutor will inflict upon the defendants, with each rung more violent than the last. In invoking the metaphor of striking someone with a baseball bat, criminal enforcement is illustrated as a form of violence.

There is an arbitrariness to the state's enforcement power. Steve is quick to point out that the enforcement decisions are not made based on the harm that had taken place, but rather on the decision of the enforcement agent. The same harm could yield any one of these responses. In this

story, then, the offender is recast as a victim of the state's capricious decision whether or not to prosecute.

These metaphors extend beyond the courtroom. Paula, a professor of environmental law, deployed the violent metaphor when discussing how she speaks with her students about their future careers:

Paula: Yeah, I mean it's nice because when you work ... I tell my students, the students are really interested in the environment. They're like, "I don't want to work for a corporation." Like where do you think you're going to have a better impact? If you believe in the environment, do you always want to be hitting somebody with a stick or do you want to be on the side where you can actually do the work to prevent having been hit with the stick? They're like, "Oh, I never really thought of it like that," but if you're inside and you can help change the culture, that's one of the ways you can do it.

This is interesting advice, because it implies that positive change for the environment begins with the very people who may be targeted for criminal enforcement: the criminal offenders. Enforcement agents, in this case prosecutors, are seen as agents whose only job is to hit violators of environmental law with sticks.

Martin: So I think that the criminal is best saved for the bad actors, for when you really have something serious, for when you really need to you know slap hard, um. You hate to think of

somebody being made example of, but that's part of it too. If you read about this, then all these other people we can't get to will reform their behavior because of it.

Again the notion of slapping emerges: criminal prosecution is equivalent to a type of violence. Martin refers to someone being made an example of, which frames the role of criminal prosecution as a symbolic one. In other words, the (state's) violence is a warning to other people. The state is a disciplining parent, and sometimes a grossly unfair one:

Michael: The other thing that I think that most people don't realize is that sometimes it can be vindictive. I had a case where, obviously can't talk about too much of the details, but where we litigated against the government because we thought that their position was outlandish. And we thought it was so outlandish that we took it to a jury trial. So we're an environmental polluter asking for a jury trial. What most people would tell you is you're going to get hung and, you know, hung out to dry. And the jury agreed with us that the government's position was just outlandish. And so we got an acquittal. On the way out the door, the government attorney said that I want you to know that we're going to turn every organ of the state until we bring you down. And so that happens. I mean, government's composed of people. People have emotions.

In this story, Michael admits that his client polluted the environment. Yet, the pollution did not warrant prosecution, so rather than settling for a plea agreement, they took the case to trial, even as the odds were seemingly stacked against them given the fact that they had committed acts of environmental harm. Despite these offenses, the jury acquitted the defendant, arguably because the state had been far too overreaching in its power. Michael uses the metaphor “get hung,” or “hung out to dry” here, invoking the imagery of having their case be killed by the state. This is perhaps because, as an environmental polluter, Michael’s case fit the low-hanging fruit narrative described in Chapter 4.

But the story does not end with acquittal. The state responds by stating that they want to bring the company down, and not because they felt as though a harm had gone without justice being brought. By stating that “people have emotions,” Michael insinuates that the reason for the state’s aggressive response to the jury’s decision was *personal*. The harm to the environment here, even though it is admitted by Michael, takes a backseat to the vindictive harm inflicted by the state. This is unexpected given the fact that in setting up this story, Michael admits to representing a company that breaks the law, and perhaps fits the depiction of the low-hanging fruit. In cases where the state may overreach its boundaries, the harm committed against the environment may be neglected because it is seen as secondary to the harm inflicted by the state.

We tend to think of our legal institutions as being objective and neutral, taking all facts into account before coming to an impartial decision. By pointing out that the government is composed of people and that people are emotional, Michael alludes to the fact that the law can, and does, act counter to that common idea. Rather, government actors can be swayed by biases and egos. By characterizing people as emotional, he is putting them in a (traditionally gendered) negative light.

Chapter Summary

There is ongoing debate about whether or not it is appropriate to apply criminal law to environmental violations. Environmental law is seen as unique in its complexity, and it may furthermore set standards that are not possible to consistently meet. Distrust in environmental enforcement is bound to a view of the state as overreaching (Brickey 1996). The stories told by attorneys that cast the state as an agent of environmental harm support this finding.

Small stories involve characterizations of actors and plots without necessarily containing full-fledged narrative elements, such as orientation, evaluation, resolution, or coda (Bamberg and Georgakopoulou 2008). When analyzing my data for these small stories, I found that often, stories would arise which focused on the state as an offender or agent of harm. Especially via the power of prosecutorial discretion, the state was characterized as yielding an immense amount of power that it arbitrarily enforced against defendants. Sometimes such arbitrary moves followed from public pressure concerning a notorious case, and other times they came from a prosecutor who was overly emotional and took things personally. Oftentimes, metaphors of violence were used to discuss levels of enforcement of environmental law. Indeed, virtually the only metaphors of violence attorneys used concerned the violent state.

In casting the state as an agent of harm, offenders were cast as victims. Companies and individuals who may violate an environmental harm, especially those who may violate the law by accident, are at the mercy of the state, a Goliath with the authority to ruin one's life. Today, environmental violations do not look like the standard crime story discussed in the previous chapter, but that these offenders do not deserve the felony label which comes with violating some of these statutes. As such, environmental law enforcement is cast in a negative, rather than positive, protective role. This is in stark contrast to the low-hanging fruit stories, which direct us

to feel that offenders are wrong and deserving of punishment. Here, the blame shifts onto the state itself, and we begin to feel that environmental law is unnecessary or overly burdensome.

By casting the state as an overreaching body which does real harm to citizens, these stories obscure environmental harm itself. Even when harm is admitted, as in the case of Michael's client, that harm is secondary to the overreach of power by the state. It is fascinating that so many of my conversations, which began as investigations into how attorneys constructed environmental harm, ended up not talking about environmental harm that much at all. In the following chapter, I discuss a more extreme instance of eliminating environmental harm from stories in the theme of the collectivization of wrongdoing.

Chapter 6

AGENTLESS HARM

Where low-hanging fruits stories are straightforward and lack nuance, the third narrative revealed by my interview data is that of a shift in the nature of environmental crimes faced over time toward what I call “agentless harms.” In the early days of criminal environmental law enforcement, attorneys described how there were plenty of low-hanging fruit cases to pursue, which occupied the majority of the attention of prosecutors, as Peter explained in Chapter 4. In contemporary times, there has been a shift from the bad actors and midnight dumping of the past to a more complex era of environmental harm. In lawyers’ stories of contemporary harm, the agent is largely obscure, either absent or collectivized to implicate all of our actions. The corporate actor once responsible for direct violations of law has cleaned up its act, and the harm is now constructed passively.

As with stories that characterize the state as an agent of harm, there were no discernible in variations in stories of agentless harm across (characteristics of) respondents when they told stories of agentless harm, such as by profession or age. But variation in stories emerged in the plot elements of the story. This chapter focuses on two distinct, at times contradictory, elements of the story of agentless harm that emerged: 1) improved environmental conditions that reduce the need for harsh regulatory enforcement; and 2) increasingly complicated environmental problems that criminal enforcement cannot deter. In each of these themes, direct harm to the environment is erased. Bad actors of low-hanging fruit stories are transformed into good actors, and the offender becomes either nonexistent or collectivized. The shift is significant for redress, as it results in environmental harms without environmental offenders. An important takeaway in

these stories is the inability of law to adequately intervene to alleviate harms; when everyone is responsible for perpetrating environmental harm, it is difficult to assign accountability to any one person. In other words, when we are all implicated as perpetrators, environmental harm becomes a normal, daily phenomenon, as opposed to a crime necessitating response. Thus, even those corporations or agencies responsible for contributing a greater share of environmental harm are able to fade into the background and evade scrutiny, because they are cast as equally responsible for environmental harms as the individual who fails to recycle, or who uses plastic drinking straws.

Improved Environmental Conditions and the Disappearance of the Bad Actor

In Chapter 4, I discussed the straightforward case of environmental law-breaking described by my interviewees mostly as a thing of the past. Here, an individual or small group of individuals directly violate an existing environmental law. When speaking about contemporary environmental harms, however, my respondents sometimes believed that these direct, low-hanging fruit cases have largely disappeared. If anything, respondents declared that environmental law was successful in responding to the bad actor scenarios which led to the perpetuation of environmental harm. Environmental law here has made significant strides in addressing some cases of environmental harm was a common theme in my interview respondents. Take, for example, the following small story told by Brian:

Brian: We still get some midnight dumping. Not at the scale that it used to be. Now it's more often to be a rogue truck operator or somebody like that dumping someplace. There's still probably bad,

sketchy companies out there. Um but we're not find- we don't- there's no modern equivalent of the Valley of the Drums. Um, or, you know, Love Canal. Um or anything like that. So, I think that the overall environmental performance has improved a lot. If you look at the, and certainly if you look at the, you know, the objective indicators of environmental quality and things like 303 lists, the, how we moved with the national ambient quality standards, you know, the environment is considerably cleaner by 50 percent or so.

Holly: Yeah that was what I, that was my next question was, so you think it's getting better?

Brian: It is. It's not that I think it. We know that it is.

Brian gives a typical characteristic of low-hanging fruit stories as relics of the past, or cases which can be attributed to an individual who has gone rogue, as opposed to a systemic problem with which we are persistently dealing. More importantly, however, is that Brian focuses on a shift that has taken place: environmental quality is getting better. Regardless of whether a few bad actors still exist, this presupposes that the dirty, wild days of environmental quality in the past have gone, being replaced by order since criminalization. In his final statement, he makes clear that this is not a feeling or a perception that he has, but rather that it is a fact. The insistence that things are getting better, though contradicted by research on environmental harm, minimizes the direct harms caused by low-hanging fruit cases.

Joseph offered a similar analysis of recent trends:

Joseph: Yeah, there was a tremendous shift. It's much, much, much more complicated now. Most of the low-hanging fruit has been taken care of. You know, people who were operating who didn't have permits, you know, just operating and sort of oblivious to environmental regulations, the midnight dumping, the careless disposal of waste. I mean, that's very, very rare to see that uh. Environmental obligations um are, are at the forefront, you know, just watch TV. So we've come incredibly long way.

Here, the carelessness and recklessness of the old days has been resolved through the enforcement of environmental law. Not only have dirty, old companies been dealt with or mended their ways, but the bad actors of the past have been replaced with good actors. Companies now attempt to be green, because they know that it will be good for business. Also by referring to being green as a marketing tool, this is seen as a positive spin for companies to be able to talk about how green they are. Marking this as a tremendous shift signifies that we have come along way, and that things are much better. Martin offered a similar analysis of the shift that has happened, especially in regards to the disappearance of bad actors.

Martin: And then in the longer view I would say again most companies now understand and just fall all over themselves to be green. So many people do things that, so many of them go farther than they have to. And, in many ways it's kind of shoot the volunteers sometimes you know. You're paying so much attention

to the social media criticism of this, this, and this, it's like tell 'em all to just go take a hike, you know.

Again, we see a shift where the bad actors and bad companies of the past are now good actors, who take action to try to engage in sustainable behavior. What is important here is not whether it is true that companies are behaving more sustainably, but that the stories told regarding this shift in environmental quality rarely focus their attention on negative actions of corporations. This makes it seem as though pollution does not happen anymore.

In Martin's story, the phrase "shoot the volunteers" implies that those critical of corporations and the actions they take to be sustainable are being *overly* critical. Here, the corporate actor is not a bad actor, but a good one that goes above and beyond what is required of them to be green. They take ameliorative measures not because they are forced to by any type of law, but rather because they have opted to do so. Activists and other critics are cast as the problem persons.

Sometimes, stories about how things have gotten better overlap with other themes, such as the state as an agent of harm. In the following story told by Joseph, he describes the minute detail with which we currently measure toxic material that may get into our water systems:

Joseph: So when I started in 1990, we were looking at contamination in soil or in water in the parts per million, in standard preset. Well, now we're looking at parts per trillion.

Holly: It's getting more precise.

Joseph: Well it's getting, I mean things that were allowed in 1992, in parts per million I mean, parts per billion is 10 times more parts

per trillion is 100 times more, so not just precise. It's, the standards are becoming much more rigorous. Yes. We have the ability to measure those levels now that we didn't have, but they're being regulated at those levels, you're being ratcheted down to almost nothing. I mean, some of my clients withdraw water, you know, for example, a steel plant has to, has to pull water from a water body. So let's say I have a steel plant client hypothetically that pulls water from the Tennessee River. Well after they use it in their process and they have a permit to discharge it, they're putting cleaner water back in the river than they're taking out of the river.

Holly: Okay. Because they have to go through a treatment before they put it back in?

Joseph: Yeah. And the standards are so low now that they are, after using water in their manufacturing process, which I mean, if I stopped a guy on the street and I asked him, hey after I used 10,000 gallons of water to make steel, would it be cleaner or dirtier? The guy on the street would say, well it'd be dirtier. And that's not true. We're putting cleaner water, not 100% of the time, but in some instances we're discharging quote pollution that's cleaner than the raw material we're receiving.

Joseph discusses how regulations regarding treated water have gotten so precise that at times, the wastewater put out by steel companies is cleaner than the original resource they used in

production. This not only giving an indication of how tough environmental regulations have become since the early days when companies could violate law with impunity, but it also plays on the idea that martin was discussing of corporations being volunteer stewards of positive environmental change. The detail he provides also characterizes enforcement action as being exceedingly precise and nit-picky: he seems to insinuate that it has gone too far.

In this story, the water was polluted by someone in the first place, and then the corporation, part of a supposedly dirty industry, actually makes it cleaner. Where did the original pollution come from? How was it originally polluted? With what material or substance? These questions are unanswered by this story, for the sake of a focus on the act of steel production as a clean act, not a harmful act. The complicating action of other, fuller stories has become a good action carried out by good actors. Again, the direct harm and the bad actor have disappeared.

Paula attributed the shift in things getting better to a shift in corporate accountability over the years. In the following story, she explains how she would recommend that students interested in working for environmental change work with corporations.

Paula: That's why I say that there are very few bad actors anymore. Because within corporations most have a culture of accountability. Bonuses are based upon your budgets. And budgets are based upon we're not going to have, you know fines now come out of people's budgets. And if you're fined, if your project has a fine your budget pays for it. It's not out of somebody else's budget. So your bonus structure and your annual stock options, those kind of things are all kind of based upon a formula that that goes into. So your finances, that all goes into that kind of corporate culture of

accountability. And I think that that's why there are very few real bad actors anymore. Because all of that is factored into how corporations do business now.

Here, it is not necessarily the law that has caused corporations to clean up, but the corporate culture itself which has shifted. The shift is perhaps dependent upon an increase in public awareness, but is mostly driven by the drive for increased capital. Paula is equating implicitly bad actors with corporations by saying that the reason bad actors don't exist anymore is because corporations have changed their culture, again reinforcing the idea that bad actors have been reformed into good actors.

The question remains, however, that if things are getting better, with what types of environmental harms are lawyers dealing? Martin describes a current case:

Martin: I had a matter last year where I'm arguing with someone from EPA about the language on a package for a product that made claims that it would kill germs. You know and it wasn't even a chemical product. It was a device, a home device, things like air purifiers and humidifiers. And I had a moment there while we were talking about well, if you can't say that it kills germs but you, or you can't say that your health will be better if you use this product but you can say that it's been treated with a pesticide-like substance in order to preserve the product from its own deterioration, 'cause that's right there in TSCA and FIFRA and these statutes, and I'm just thinking we're a long, long way from all

the birds being dead in 1962 because of that. We're now arguing over, we're spending all of our resources on this fine tuning of this, and I know that's important, but...wow.

Martin began practicing environmental law when low-hanging fruit cases were the everyday. He arrived at the environmental law scene at the time when some of the earliest criminal provisions had been passed. The surefire attitude that things have gotten better was echoed by Frank, a gruff man who worked in a downtown law firm in the south. "Look out at the river from my office! It's perfectly clear!" He stated, gesturing his hand out to the large floor-to-ceiling windows. "Before you were born, it wasn't like that." Frank went onto explained that the past 40 years of work, from the development of criminal and civil regulatory measures, is a good thing. "The blend of all of those things [options]," he said, gesturing out the window again, "the proof is in the pudding."

To restate, attorneys told stories of a shift in environmental harms that had taken place over time. One such shift was that things were getting better. The general attitude that things are getting better supports past research that a variety of regulatory responses to environmental harm provides the most solutions, as opposed to relying on one tool only (Brisman and South 2015; O'Leary and Raines 2001). The shift renders several facts invisible, however. First, it implies that direct harm to the environment is no longer taking place. In conjunction with characterizations of state as an agent of harm, this may construct environmental law as unnecessarily strict or overbearing, especially since things are getting better.

Not all respondents agreed with the claim that things are completely better. When asked if he thought things were getting better, Scott, an assistant district attorney in the Midwest, said

that he believed environmental laws certainly helped, and had contributed to improving the environment. “Whether overall we’re making progress is a different question,” he stated. “I think that implicates the entire regulatory system, and political system as well.” Scott separates the improvements that environmental law has made to environmental conditions from the overall improvement of environmental quality. Environmental law here has a limit. There are only certain actions and violations which law is equipped to address. He does not provide detail, but one can assume that the low-hanging fruit cases are those that environmental law is equipped to address. Perhaps we have reached the limits of what law is able to accomplish. In the following section, I turn my attention to the harmful actions which law is still grappling, or attempting to grapple with: sneaky harms. These are often indirect, less visible than the harms of the low-hanging fruit cases, and the ones that we are facing to this day.

Increasingly Complicated Problems

Despite improving environmental conditions, in some respect, and the disappearance of the bad actor, many of my respondents were realistic in acknowledging that environmental harms still existed. The harms we experience today, however, were often characterized as less direct and more sneaky than those of the past. Take, for example, the following story told by Joseph:

Joseph: So now the matters are much, much more complicated. I mean, you know, um, oh I can’t remember, it’s probably been two, three years ago, we had a trial, a jury trial, which is rare, you know, again, you know the statistics, 98 percent of all cases settle, they don’t go to trial. For a case to go to trial particularly an

environmental trial it's measured every four, five, six years now.

So we took a case to trial. I mean, one of the things I did is I stacked up all the regulations that applied. I mean I pulled the actual hard copies of, of the code of federal regulations and put them on the defense table just so the jury would see every day. I mean it was, it was a stack of books about two feet high.

Holly: Oh my gosh!

Joseph: And those were the regs that applied to the air permits the facility held. Yeah. I mean thousands of pages of regulations. The manufacturing plant has to be aware of, understand and comply with that there are hundreds of compliance points at a modern - I mean at a chemical plant? There are probably tens of thousands of compliance points, every day. And so you'll hear these, you'll hear these statements in the media, you know they had 300 violations. Like, well okay, they had 300 violations out of how many opportunities to violate? And then you go and you start looking at it, and you find out this facility was 99 percent compliant. So anyway, um, yes, in answer to your question...and listen it's a good thing, that a lot of the objectives have been achieved. And now we're down to, you know, what is it, the 80/20 rule? 80 percent, whatever the first 80 percent, I can't remember the rule, is really easy to get to, the last 20 percent takes all the effort. We're

down to, the easy stuff has pretty much been addressed. We're, we're down to the very complicated, difficult.

Here, Joseph outlines the 80/20 rule, which implies that most environmental harms were the low-hanging fruit cases discussed in Chapter 4, and that those have largely been dealt with, figured out. Yet, if harms have been dealt with, what continues to exist? Ostensibly, a minimum (20 percent) of environmental harms which are not straightforward. Again, there is an allusion to the burdensome nature of regulations. When one is 99 percent compliant, even having 300 violations seems absurd: 300 violations could still be within 99 percent compliance, which speaks to the vastness of regulatory environmental statutes. Tens of thousands of compliance points also makes it seem like it is unrealistic for any company to keep within compliance at all times. Again, the focus of harm is shifted. It is not the "hard stuff" that law is now dealing with, but rather mundane regulatory issues.

The persistence of sneaky problems led some respondents to muse about the future of environmental regulation. Like a pendulum, they believed it may swing back to stricter period of regulation. Tyler, a prosecutor with minimal experience in environmental harm, mused about the shift we may face in the future.

Tyler: I think you're pretty, probably honestly I'd say in the next 20 years you're going to see more environmental crimes codified into law. There'll be more crimes that relate to environmental law and I think that's based on the generation being more concerned with the environment and I maybe shouldn't say concerned but more aware of the effect that we're having on the environment.

This is interesting, because Tyler is younger than other lawyers who have said we have already witnessed a shift due to caring about the environment. What is this next shift? Perhaps it is alluding to the shift that we see with the more difficult harms. Paula also mentioned the potential existence of a future shift in the following story:

Paula: I think there was a time when we were really on the upswing, but it's gotten worse. Because I think people have, we hit a plateau and things were going really well, and suddenly people were like, "Things are great. And now we don't need it anymore." And that's just not true.

Paula refers to environmental law as a tool that had once brought about great, positive change, like the ones discussed in the previous section. She attributes a recent slacking in environmental regulations to a shift where regulations are considered too burdensome. Despite placing earlier emphasis on cultures of accountability within corporations, Paula still found environmental law to be necessary for environmental protection.

Brian: A lot of progress has been made, but there's still a lot more progress to be made, and the problems that science and medicine and ecologists are coming up with now can be real head scratchers. Here's one example: do you wear any Patagonia?

Holly: I do not.

Brian: Jackets or sweaters or North Face or, like that-

Holly: I do have a North Face.

Brian: Essentially, fleece. So in one sense, fleece stuff in a lot of cases is made from either recycled plastic products or virgin plastic resin. Fleece is plastic, okay. In most cases, unless you can afford natural like sheep fleece, stuff like that. And we throw those things in the washing machine without a thought. But in the last couple years, people have determined that when you wash those things, microfibers for the plastic go down the drain, out in the waterways where they seem to have some attractiveness to fish and other marine life and it ends up in the fish and in the marine life to their detriment. Well, so in one way, you want to wear fleece because it's recycled plastic. In another sense, you know, nobody has a washing machine right now, although I think they're starting to make some add-on filters that, um, you know, just by wear, uh by washing that stuff, you're creating a potential threat to the ecosystems in our water bodies.

Here, Brian makes an interesting observation that reminds us that environmental harm may arise from legal activity, even from something as innocuous as washing a coat. Unlike the examples highlighted earlier in this work, however – such as the threshold set around safe pollution or amount one can log or fish – there is no individual or corporation who can be pointed to for causing harm. We are all implicated here, for actions that it seems laughable to criminalize. Criminal environmental law is, in other words, incapable of intervening to alleviate this particular type of harm. In Brian's story, environmental harm continues even if environmental

regulation takes place. The story confirms what those who point to our criminogenic industry have laid out: law is often incapable, at present, of responding to environmental harms.

Chapter Summary

The small stories people used to talk about environmental harm pointed to two sometimes complementary, sometimes contradictory themes: 1) we have experienced a positive shift where the environment is improving, in part due to environmental regulations, and 2) we have experienced a shift where obvious environmental harms have been alleviated, but left us with complicated and difficult harms to attend to. In the first theme, attorneys were happy with the role environmental law had played in taking care of the low-hanging fruit cases described in Chapter 4. In some instances, the state as an agent of harm was invoked again, where regulation and regulators are too burdensome for the present-day, where companies are racing to be green and sustainable. The notion that things are getting better and that law was unnecessary, however, was not universally shared. Near the end of our conversation, Brian, who had seemed to disapprove of the regulation, sighed, “But we have that system for a reason, and for the most part it works. Um, but what I’m saying is that having lived a life of trying to resolve these issues, it ain’t easy.”

The difficulty of solving contemporary environmental issues was captured in the second theme, in which attorneys noted that problems have gotten harder to solve because those engaging in environmental harm are sneakier or more covert. Here we find corporations being more insidious in concealing their actions. When discussing hidden pipeline construction on cruise ships used to illegally dispose of waste at sea, Scott noted that catching environmental

offenders was a game of “cat and mouse.” New technology may make it easier for corporations to offend without detection, waiting for the state to catch up.

In addition to insidious bad actors, the second theme includes a collectivization of environmental harm. Here, the offender disappears as well. But unlike with the bad actor offender, where the actions become sneakier and more difficult to uncover, the offender is *all of us*. Because environmental harm is always occurring, we begin to question whether or not it can be criminal at all. Recall the example of washing a fleece jacket: this harm to the environment implicates us all and it is unclear whether environmental law is equipped to intervene.

Narratives of agentless harms represent the most diffuse stories of environmental crime. Harm done to the environment is constructed in a passive sense, meaning that while we still have great environmental harms to address, there are no “harmers” with which to attribute blame. In other words, when everyone is accountable for perpetrating environmental harms, then it makes it easy to hold no one in particular accountable in our system of law. Who can be assigned blame when everyone can be assigned blame? In our current system, this means that there is nuance to these issues, and we cannot easily decide just by looking at a case who is in the right and who is in the wrong. The cases have become more difficult, and who is the offender and who is the victim is not easily discerned. It is in these cases where the utility of not only criminal law, but environmental law as a whole, is brought into question. A major question thus looms large: can law respond to the everyday behaviors which contribute to massive environmental harm? Does cultural change begin with passing more laws?

CHAPTER 7

DISCUSSION AND CONCLUSIONS

Currently we face greater global environmental problems than we ever have before, including challenges brought on by climate change, the production and management of waste (Baldé et al. 2018; UNEA 2017; Hoornweg and Bhada-Tata 2011; UNEA 2017), the loss of species and ecological diversity (Brashares et al. 2014; Carrington 2014; Babcock 2009; Chivian and Bernstein 2008), and air pollution (Weller 2018; UNEA 2017; WHO 2016; Caiazzo et al. 2013). These problems take an immense toll on the health and lives of humans and non-human animals; those affecting humans are inequitably distributed across race, class, and gender lines (Lerner 2010; Bullard 1993).

In the contemporary United States, with a political administration largely hostile to environmentally friendly policy, it is now more crucial than ever to understand the way that cases of environmental crime are framed. This study took the approach of both green cultural criminology and narrative criminology. First, I presumed that what gets represented as environmental crime is culturally defined; its meanings are (re)produced and sometimes challenged within sociopolitical contexts. Second, I posited that, because stories are constitutive of our attitudes and beliefs, it is in part through stories that knowledge of environmental crimes is constructed and conveyed. Because of their ability to shape our expectations for what is and is not criminal behavior, stories are a powerful cultural conduit for speaking about environmental crime.

Representations of natural resources, such as water and air, collective well-being, and the Earth as a whole, are at the heart of green cultural criminology. There is now a growing body of

literature devoted to tackling how such representations are constructed and mediated, to which this project contributes by borrowing from the literature on narrative. Narrative is special because we live storied lives and think in stories (Bruner 1990). In understanding the resources available to us, we tell stories about our relationship to the earth and its available resources. We tell stories to justify our behavior of overconsumption, pollution, climate change, and other harmful behaviors. Brisman (2016) discusses the intersection of narrative and green cultural criminology and issues a call for the exploration of storied representations of the environment. Taking his vision as a starting point, but setting aside for another day his recommendation of exploring fiction, this project looks at the (non-fictive) stories of attorneys.

Attorneys, who embody the realpolitik of environmental law and regulation, have the power to shape courtroom narratives that may influence justice outcomes. This project taps into the logic that attorneys apply when going about their jobs. Habitual narratives (Fleetwood 2016) become part of the everyday, and in doing so uphold social structure and present inequalities. When attorneys tell stories of low-hanging fruit, they reaffirm that the duty of criminal law is to assign blame to one or a small group of individual perpetrators, ending the case. It does not matter whether the harm has been resolved; the law ends when the verdict is handed down. Because so many of the harms we face today do not fit the definition of low hanging fruit cases, this language reproduces a system that is unable to respond adequately to or sanction environmental harms.

The study also makes a contribution to narrative criminology. Much of narrative criminology has centered around the stories of offenders. This project, building from the concept of cultural and institutional identities offered by Loseke (2007), reveals stories from legal actors in the domain of environmental harm that have not been fully fleshed out. In the following

section, I review the stories of environmental crime investigated in this project. I then highlight some of the limitations of my study and outline directions for future research I wish to take.

“What is the Story?” Attorney Constructions of Environmental Crime

Presser and Sandberg (2015) ask of narrative criminologists, “What is the story?” In this study, I take the first step in answering this question with respect to environmental crime. In our conversations, attorneys deployed several stories – both full-fledged and small – in order to discuss ideal cases of environmental crime. The most obvious and straightforward stories of environmental crime were low-hanging fruit cases, where offenders flagrantly violate environmental law to save time or money and often lie or otherwise misrepresent their behavior in doing so. A second group of stories centered the state as an agent of harm, as opposed to the individual or organization which violated environmental law in the first place. Finally, attorneys spoke about the collectivization of environmental harm.

Low-hanging fruit stories are the prototypical story of environmental crime. Here, an individual or group of individuals violate an existing law recklessly or negligently, resulting in some harm to the environment. Every respondent I spoke with made reference to these low-hanging fruit cases. Past research has shown that the most compelling crime stories are those with little nuance and a clear distinction between right and wrong, because these are easy for listeners to understand and relate to (Weiss and Colyer 2010; Best 1995). It makes sense, then, that low-hanging fruit stories were unanimously told by attorneys in my sample: these stories contain highly visible, direct violations of environmental law, and leave little room for questioning whether or not perpetrators behaved wrongly. Also in line with past research,

because prosecution of alleged violations of environmental law is more likely when there is direct evidence of the crime taking place, it makes sense that this is a story of environmental crime that would be told (Akella and Cannon 2004). Not all environmental crimes are so straightforward, however, nor are such cases calibrated to harmful effects. The story neglects a swath of more and less egregious offenses.

Research suggests a blend of regulatory responses is more successful (Brisman and South 2015; Sahramäki et al. 2015; Brickey 1996). Indeed, an overreliance on criminal enforcement may lead to the belief that enforcement agencies overextend their authority or set too high of standards (Brickey 1996), which produces a second story which emerged in my data – the state as an agent of environmental harm.

In my conversations with attorneys, the primary offender discussed overall was the state. Low-hanging fruit cases, while concerned with supposedly straightforward and egregious harms, were mostly described as things of the past. Today, environmental conditions are allegedly much better, and an increase in knowledge of environmental laws and regulations as well as a changing cultural attitude favorable to environmentally friendly policies has driven most would-be offenders to attempt to remain in compliance. Such efforts are often thwarted, however, by an overly authoritative regulatory agency that has set the bar too high. Punishments for environmental violations often exceed what attorneys thought to be fair, and they invoked metaphors of violence to describe them. By constructing the state as the offender, these stories allow those who violate environmental law to escape scrutiny and attention, because the violations themselves are hardly the central issue. This may allow for corporations to escape the label of *criminal*, even when they violate criminal law.

It is worth noting that not all criminal violations of environmental law result in direct harm to the environment. This point brings me to a third story told by attorneys: a shift away from low-hanging fruit cases of the past, to new, collective harms of the future. Largely told through small stories (Bamberg and Georgakopoulou 2008), stories of collective harm implicated all members of society in perpetuating environmental harms. This was achieved through the disappearance of direct harms to the environment (due to environmental conditions improving) and bad actors, who have now been reformed into good actors that strive for compliance with regulatory law. When speaking about how environmental harm has shifted from the beginning days of environmental criminal law through present day, the bad actor is only sometimes mentioned in passing, a character that can be (and in fact, largely has been) attended to by enforcement agencies. The language of these stories produces environmental harm as everybody's doing. Much like the stories which cast the state as an agent of harm, again those who violate environmental law are removed from the focus of the story. Here, because harm is reproduced through our daily actions, such as washing fleece clothing or driving cars, criminal environmental law cannot help to provide a solution.

Past research on enforcement decisions in response to environmental law shows that victims often go unrecognized in sentencing decisions (Brisman and South 2015; Skinnider 2013). In each of these stories, victims of harm are often omitted. Low-hanging fruit accounts *may* include them, such as in regard to large-scale, acute environmental disasters like the Deepwater Horizon spill, which drew public outrage and notoriety. However, even in these scenarios, the experience of the victim is only implied, rather than foregrounded. Given the literature on environmental justice, which highlights the tendency for marginalized communities to experience a greater burden of consequences from environmental harm, I suspected that the

demographic makeup of effected communities may be brought up as a factor in an ideal case of environmental crime. My findings, however, contradicted this assumption – my respondents rarely brought up the race, class, or other demographic characteristics of potential victims of environmental harm without prompting. Furthermore, in no case was the environment itself mentioned as a victim (i.e., the body of water or the plant and animal species which depend on it in the case of midnight dumping). Perhaps the reason victims are so often omitted from sanctioning decisions is because more generally we erase victims in our stories of environmental crime.

These three stories together have produced a much broader narrative – it might be called a meta-narrative – that frames the history of environmental harm in the United States. We began in an environmental Wild West, where individuals were violating environmental law with impunity, prompting the passage of criminal statutes and a wave of prosecutions of low-hanging fruit cases. Then we began to see a shift away from these low-hanging fruits; rarely do attorneys believe these cases exist anymore, and if they do, they exist in small numbers. As such, enforcement agencies, such as the EPA, become the harm-doers, unjustly punishing industry and overexerting their authority. Still, attorneys were hesitant to commit to the notion – hinted at by a few – that the environment as a whole was getting better. Instead, we have shifted to a time of where harm exists without a nameable offender, where we are collectively implicated in the harms we face today. The meta-narrative incapacitates. For what shall we do without a clear culprit, especially when we wish to avoid the alleged overreach of the past?

Limitations and Directions for Future Research

This study contributes to the growing fields of green cultural criminology and narrative criminology. To begin, it outlines the prototypical low-hanging fruit case as a culturally shared understanding of environmental crime among attorneys. In future research, I would like to compare this story to stories told in the courtroom to the cases which have gone to trial to look for similarities. I would also like to investigate courtroom transcripts to see if similar metaphors of violence or characterizations of the state would be found there. By comparing whether ideal stories ever make it into the courtroom, we can begin to see the power that stories have. Do prosecutors invoke bad actor scenarios when accusing the defense? Do defense attorneys cast the state as burdensome or an agent of harm? These would be questions for that study to answer.

Despite the provocative findings outlined here, a larger corpus of stories from a more diverse group of attorneys would be ideal. Many of the attorneys who saw a shift in environmental law were older, having worked in the realm of environmental law since early regulatory laws were passed. Would younger attorneys speak similarly? In addition, I would like to speak with more activist attorneys, to probe whether or not there exist differential responses depending upon the specific job an attorney holds. Would the stories of multiple prosecutors match the defense attorneys or consultants I spoke with? Would activists have different perspectives?

In addition, I would like to revisit interviews with new questions in mind. In particular, I would like respondents to explain the difference between individual offenders, such as a rogue truck driver or plant manager who orders the illegal disposal of hazardous waste, and aggregate offenders, such as the criminogenic oil industry. How do attorneys cast corporations that have been guilty of criminal acts when a corporation cannot be placed in jail? And what of cases

where harm has been collectivized? Past research shows that the most direct and straightforward stories work best in motivating action. Can stories motivate action when they implicate everyone, with no clear indication of who is the victim and who is the perpetrator?

This project is one step in a larger career goal of understanding the power of stories of environmental crime. Through my initial, exploratory interviews, the project began to evolve beyond understanding idealizations of environmental crime and into how legal actors define and react to environmental law as a whole. That is, in my conversations, I learned how attorneys spoke about compliance, about current environmental issues, and about the ability (or inability) of law to respond to such issues. A large body of research exists in the field of “legal consciousness,” which refers to the ways law is experienced, defined, or interpreted by individuals (Ewick and Silbey 1998). As I move forward with collecting more interviews with a more diverse group of interviewees, I would like to revise my questions to collect stories not just about idealizations of environmental crime, but about the legal consciousness of respondents as a whole. Such an endeavor would seek to reveal the *environmental* “legal consciousness” (Ewick and Silbey 1998) of future respondents, or the ways in which environmental law is experienced, interpreted, and reacted to.

Concluding Thoughts on a Culture of Impunity

In concluding this dissertation, I return to my personal reasons for studying attorney narratives of environmental crime, as encouraged by Clandinin and Huber (2010). I began this project with a proclivity towards seeking out narratives due to my experience in researching rape myths and bystander constructions of sexual violence. While the subject matters appear worlds

apart, I see important connections between them I would like to lay out here. Rape myths consist of a mix of cultural identities and institutional identities, providing us with an ideal victim, as well as an ideal perpetrator, and render invisible the stories of anyone who deviates from these idealizations (Loseke 2007). Our laws themselves are predicated upon institutional identities of victims, privileging certain survivors of sexual violence; cases where survivors have consumed alcohol or drugs voluntarily are, for example, less likely to be brought to trial by prosecutors (Krakauer 2015), and men were not officially recognized as potential victims under federal rape law until 2013. Taken together, the standard narratives of sexual violence have allowed men to continue to harm women and other men with impunity.

Ecofeminism draws parallels between the mistreatment of women, people of color, and other marginalized groups and mistreatment of the land, resources, nonhuman animals, and other elements of the Earth. The parallels owe in part to the gendered nature of the distribution of environmental harm; women are more likely to be affected negatively by the consequences of climate change and other ecologically destructive behavior (Warren 1997). But they also hint at something cultural about the way that Western, patriarchal, capitalist society constructs the right to land and natural resources. Certain actors claim an entitlement to the exploitation of the earth as they do to the exploitation of other bodies. Narrative inquiry, in part resulting out of a critique of positivist, variable-restricted science, gives voice to these connections that have been kept to the sidelines in scientific inquiry. In addition, and though this was not the angle on narrative that I took, narrative research can give authority to the stories of a variety of tellers, including those from marginalized groups (Bochner 2001). Similar claims have been made by Pellow (2016), who draws links between the Black Lives Matter struggle for racial justice and the struggle against environmental racism. In this work, Pellow (2016) argues that the violence against black

bodies by police and law enforcement agents is driven by the same cultural logics that violate black and brown bodies via pollution by state and corporations. There is an expendability of human and non-human populations; we sacrifice these groups for the sake of the status quo (Pellow 2016; Lerner 2010).

In both the case of sexual violence and the case of environmental crime, prototypical stories draw upon commonly understood cultural identities of victims. These identities are characterized by direct, visible, measurable violence, ideally with evidence that a crime has taken place, such as photo or video proof, or bruises or toxic waste left behind. Such stories deplete the nuance and render invisible other types of harm which may deviate from the ones they feature. Accordingly, our very culture becomes criminogenic.

We must take seriously the cultural logics which drive us to harm each other and the Earth with impunity. Bringing to light prototypical stories is a first step at being able to challenge these stories. When rape myths became popularized, prevention programs could learn from them and adjust their efforts so as not to perpetuate myths and create more helpful prevention strategies. The exposure of rape myths has also spurred a shift in how we speak about sexual violence, as evidenced by the rise of the #MeToo and #TimesUp movements. Perhaps in revealing prototypical stories of environmental harm, this work can do the same. In the concluding remarks to the *Routledge International Handbook of Green Criminology*, Brisman and South (2013b:411) caution:

Implicit in the identification and analyses of various environmental harms is a point we wish to highlight here: While we, as humans, are individually and collectively driving the “sixth wave” of mass

extinctions so that half of the world's estimated 10 million species of plants and animals may vanish by the next century, we are also actively, rapidly (and, at times, seemingly intentionally) accelerating the eventual extinction of one very important species: us.

The stories described in this dissertation largely omit victims and obscure harms. They vilify the state and extant remedies. By holding everyone accountable for perpetuating the complex environmental harms we face today, it allows no one in particular to be held accountable. In these ways, they uphold a culture that lets complex but pressing harms continue to be done with impunity. I hope my inquiry can help to construct new stories of resistance.

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APPENDICES

APPENDIX A: INTERVIEW PROTOCOL

Overview and Purpose

The purpose of this study is to investigate attorneys' perceptions of and experiences with alleged cases of environmental harm and/or crime. Your participation in this study will help criminologists understand remedies for environmental harm.

Informed Consent

Demographics/Background Information

Gender: _____

Age: _____

Where are you from:

How long have you been working in the area of environmental law/at your present [firm/organization]?

Tell me a little bit about the work that you do.

Narratives, Perceptions of the Ideal Case

Do you believe alleged violations of environmental law are best handled through criminal, or civil pathways?

When allegations of criminal wrongdoing occur, what do you think is the ideal case prosecutors can take on? What makes that case ideal?

What are some memorable cases you have been involved in?

Can you tell me about any surprises you have encountered in doing this work?

Do you believe that there has been a shift in the nature of environmental offenses committed overtime? Do you believe that the quality of our environment, in general, is getting better?

Final Thoughts

Is there anything else you would like to add?

APPENDIX B: INFORMED CONSENT STATEMENT

**Department of Sociology
University of Tennessee
Holly Ningard, Principal Investigator
(440) 465-8378**

AGREEMENT TO BE PART OF A RESEARCH STUDY

PURPOSE

The purpose of this study is to assess opinion about environmental crime, including factors which constitute a strong legal case against a corporation accused of violating environmental law. The researchers will be interviewing people, mainly attorneys, from across the United States to achieve this purpose. All data gathered by the research staff will be used only for the purpose of the study.

PROCEDURES

I understand that this study involves interviews in which I am participating. Interviews will take place in a public café or coffee shop in a quiet place where the researcher and respondent can talk privately. Any one interview will last 30 minutes to one hour, and will be audio-recorded. The recordings will be transcribed and no identifying information will be included in transcripts. Copies of transcripts will be stored in a locked file for three years on the University of Tennessee's campus. Only Holly Ningard and Dr. Lois Presser will have access to this file. The researcher will not ask for details about clients or cases, but if you are concerned that an answer you give may breach attorney/client confidentiality, you may decline to answer the question or ask to end the interview. If, in retrospect, you believe that you have provided information that you should not have, you can request that the researcher remove the part of the transcript in question.

POTENTIAL RISKS AND BENEFITS

I may feel discomfort, such as sadness or anxiety, from discussing potentially upsetting cases. No other risks or problems are expected to result from the study. While there are no direct benefits to me personally, I understand that this study will potentially benefit scholars' understanding about legal constructions of environmental harm.

RIGHT TO WITHDRAW

I understand that my participation is voluntary. I am free to refuse to be interviewed as part of this study. I am also free to decline to answer any question or questions, or to withdraw from the study at any time without any consequence. These decisions will be kept private.

AVAILABILITY OF INFORMATION AND CONFIDENTIALITY

If I have any questions about the study or the interviews, I am free to call Holly Ningard at (440) 465-8378 or Dr. Lois Presser at (865) 974-7024. If I have any questions about my rights as a

research participant, I may contact the UT Office of Research IRB Compliance Officer at utkirb@utk.edu or (865) 974-7697.

CONSENT

My name will not be on any record except for this form. This form will be kept in a locked file for three years, separate from other research documents. Only Holly Ningard and Dr. Lois Presser will have a key to this file. All other records will be kept under a made-up name instead of my real name. The information that I provide during the session will not be associated with me, even after the study is over. I, the undersigned, understand the above explanation, have received a copy of this form, and volunteer to participate in this study.

Participant's name (printed)

Participant's signature

Date

Principal Investigator's signature

Date

IRB NUMBER: UTK IRB-17-03980xp
IRB APPROVAL DATE: 12/08/2017
IRB EXPIRATION DATE: 12/07/2018

APPENDIX C: DESCRIPTION OF INTERVIEW PARTICIPANTS

Name	Age	Profession
Martin	61	Compliance Counsel
Frank	62	Defense Attorney
Peter	76	Defense Attorney, Former Prosecutor
Jason	56	Defense Attorney
Allen	72	Former Prosecutor
Stephen	64	Compliance Counsel
Brian	62	Defense Attorney
Michael	54	Compliance Counsel
Scott	55	Legal Researcher
Joseph	52	Compliance Counsel
Ruth	72	Former Judge
Tyler	28	Assistant District Attorney
Paula	58	Law Professor
Austin	29	Legal Consultant

VITA

Holly Ningard was born in Cleveland, OH, to the parents of John and Tricia Ningard. She is the oldest sibling, with one younger brother, John Ningard, and sister-in-law, Miranda Ningard. She attended North Royalton Middle School, and later North Royalton High School in North Royalton, Ohio. After graduation, she attended Ohio University where she earned a Bachelor of Arts degree with a dual major in Criminology and Philosophy in Spring of 2012. She remained at Ohio University for to earn an M.A. in Sociology in Spring of 2014. She then attended the University of Tennessee, Knoxville, joining the Department of Sociology to pursue her Doctorate of Philosophy. Holly has now accepted a faculty position as Lecturer of Sociology at Ohio University in Athens, OH.